Translating Rule of Law to Myanmar:

Intermediaries' Power and Influence

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Candidate's declaration

This thesis contains no material that has been accepted for the award of any other degree or diploma in any university. To the best of the author's knowledge, it contains no material previously published or written by another person, except where due reference is made in the text.

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ABSTRACT

With Myanmar's 2010 general election, the country's regime undertook a managed transition from military rule. As foreign organisations flocked to Myanmar to initiate rule of law assistance, development intermediaries emerged to mediate, translate, or broker a rule of law model proposed by foreign actors.

In the broader field of development studies and anthropology, intermediaries have been identified as key subjects of analysis and as actors with significant agency and influence. However, little is known about their power and influence in relation to rule of law assistance. To address the lack of theoretical, methodological, and empirical analysis, this thesis poses the question -- How do intermediaries influence rule of law assistance in Myanmar?

Through an inter-disciplinary approach and extended field work in Myanmar during 2014-2015 that involved ethnographic observation and qualitative interviews, this thesis finds evidence that intermediaries come to possess significant influence and power in the rule of law assistance field. They steer the direction of development interventions, translate global concepts selectively, and mediate and buffer disagreements between development counterparts who do not share the same values and understandings. Intermediaries also influence rule of law assistance in Myanmar because foreign development actors, who often lack cultural and linguistic knowledge, are fully reliant on them to carry out their development activities. Because those foreign actors are distrusted by local actors, including the government, intermediaries are central to trust- building.

This thesis shows how a focus on intermediaries is an important vantage point from which to consider the enterprise of rule of law assistance. It is through the study of intermediaries' experiences, as they try to introduce a global model of rule of law

ideas and practices, that the rationales and complexities of rule of law assistance can be unpacked. This thesis makes an original contribution to theory by arguing that the conceptualisation of rule of law as a model provides better insights into the enterprise of legal development assistance because it shifts analysis from debates about the content of global norms or principles, to the ways in which intermediaries are vital for the model's transmission, and then its adaptation and appropriation. In doing so, it provides a critical perspective on attempts to translate rule of law to new settings. Myanmar as a case study highlights in particular the difficulties of translating that model to a setting controlled by a military regime during political and economic transition.

Empirically, this thesis shows that intermediaries influence rule of law assistance because they steer project allocation, deliver diffused messages of local needs, are central for trust-building between foreign, national and local development counterparts, translate rule of law selectively and recursively, and exercise the power to decide who will, or will not, be included in development activities. This thesis argues that, without understanding who these intermediaries are, and how they exercise their influence, we cannot fully grasp either the process, or the limitations of, the global transfer of the rule of law.

Table of Contents

Chapter 1. Introduction

I had travelled to Hpa-an, the capital of Myanmar's[1] eastern Karen state, for a chance to meet with a local lawyer[2] who worked for several of the foreign-funded rule of law assistance[3] projects that were initiated in the country after its political opening in 2011. Usually based in Yangon, the lawyer was in Hpa-an for one of his regular meetings with local activists and lawyers. On my way to our meeting, I walked through the pitch black streets of the small town where the only lights came from the bright print of government billboards that declared the 'people's desire':

> Oppose those relying on external elements, acting as stooges, holding negative views; Oppose foreign nations interfering in internal affairs of the State; Crush all internal and external destructive elements as the common enemy.

The message provided me with no comfort before meeting a stranger in a country I still did not know much about, a person who I imagined would have little patience with a foreign researcher asking questions about his work. However, as soon as I walked into

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[1] Throughout this thesis I refer to 'Myanmar'. 'Burma' is primarily used to refer to the country under colonial rule and when referencing, for example, the 'Thai-Burma border', which is most known for that name, and when authors or interviewees have chosen to use 'Burma' over 'Myanmar'. See (Dittmer 2008) for a detailed account of the country's name change.

[2] The language of 'local', 'national', 'global' and 'international' is never easy. Often these locations and cultures are overlapping, interrelated, and difficult to distinguish. For example, 'local' actors increasingly also operate in 'global' arenas and thus come to apply 'international' discourses in 'national' settings. The inherit bias in such terminology is problematic, because 'international' knowledge is often perceived as superior to 'local (Rossi 2006). Following Rossi, I recognise that there are problems 'raised by analyses relying, even figuratively, on the notions of donor and recipient 'cultures,' or on the opposition between 'local' or 'indigenous' knowledge and 'Western scientific knowledge' (2006, 29). To completely deconstruct the language of development, however, would not serve the purpose of identifying its key gaps - as my study sets out to do. Rather, we can contribute to the discourse of development by analysing intermediary actors that have received little recognition, and thus develop a more accommodating language of development assistance.

[3] I use the term 'rule of law assistance' to refer to the collective activities of the transnational 'project' that carries with it distinct concepts, technologies and practices of rule of law programmes and activities variously labelled as 'law and justice', 'governance', 'legal and institutional reform', 'access to justice', 'policing' and 'corrections support'. By definition this is work that takes place in developing or fragile country settings, within the tight constraints of a development aid funded project. After political transition in 2011, Myanmar became the subject of such development assistance and remains, in 2018, a fragile country deemed in need of justice, peace, and the rule of law.

the small restaurant where we were meeting, Zaw Win Thein's[4] smile lit up the room and I felt a sense of relief.

Zaw Win Thein is a fluent English speaker and has definite views on human rights and what is needed for rule of law development in his country. His friendly personality is inviting and I soon understand why he was a key person to talk to when representatives from foreign organisations came to Yangon to assess the rule of law situation and plan activities as part of new assistance packages.

Beyond his legal work and assignments as a consultant for foreign organisations, Zaw Win Thein ran his own (Non-Governmental Organisation) NGO on the side, and tried to attract funding to local rule of law projects. His role changed depending on the actors he worked for and was contingent on the task he was faced with. Zaw Win Thein told me that sometimes he did "lawyer work", which he preferred to "handling money matters". He needed to translate foreign concepts and terms so that they made sense to national and local counterparts.[5] Often, he found himself in situations where he needed to mediate between development counterparts who did not share the same values and understandings -- a position he was not comfortable with. Sometimes, Zaw Win Thein confused the foreign organisations he was contracted by, who were puzzled why certain people were invited to the development activities they funded while others were not. They sometimes felt as if peculiar translations took place during meetings. At the same time, these foreign development actors confessed that they were wholly reliant on people like Zaw Win Thein to carry out their rule of law assistance activities. At the same time, Zaw Win Thein also caused some anger among local counterparts, who

[4] All names used in this study have been modified to protect the identity of my research participants. Myanmar names (except those of some ethnic minorities, see Skidmore, 2003, 6) often consist of several syllables, none of which would be classified as a 'surname' as in naming structures found in some other countries. Names can also be changed during the course of one's life, without much formality or stigma.
[5] 'Counterpart' is the current term used in development discourse to signal the partnership of aid, indicating that international and local actors are equal partners who work towards the same outcomes and outputs. This focus on counterparts replaces an older discourse of 'donor' and 'recipient.'

believed that he distorted messages and tried to keep certain information from them. They claimed that he did not have any real influence but still got much attraction from, and was loyal to, the 'internationals'. Zaw Win Thein, on the other hand, explained that the upset feelings were due to the distrust local actors had toward international law and foreign interests and that he was just trying to explain the international framework as part of his work on translating rule of law to the local level.

After the abrupt escalation of political transition in Myanmar in 2011 (outlined below), economic, social, and democracy changes were initiated. A space opened up for development actors to progress with rule of law assistance. As a result, individuals like Zaw Win Thein, who possessed language skills and education to become 'intermediaries' were actively sought for, or positioned themselves for, the role of intermediary, in a competition between foreign development actors.

I use the term 'intermediary'[6] to denote an individual – or group of individuals – who plays the critical functions identified in my study of Myanmar: as mediator, translator or broker 'in-between' other parties[7]. She is not a neutral 'go-between', but someone who gains from, or influences, different transactions and capital (Long 1975, Silverman 1965), while oscillating between different roles, depending on the task at hand.[8]

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[6] Intermediary is not an official position, found on somebody's business card, but rather an analytical lens (Bierschenk, Chauveau, and de Sardan 2002) used by the researcher to explore a specific role or certain types of activities.

[7] In Chapter 2 I further elaborate on the various ways intermediaries self-identify through different labels.

[8] Political anthropology scholarship has attempted to define and demarcate differences between an 'intermediary', 'broker', and 'mediator', without much conceptual coherence. Scholars have defined 'broker' as "the groups of people who mediate between community-oriented groups in communities and nation-oriented groups which operate primarily through national institutions" (Wolf 1956, 1075); someone who controls "second order resources" (i.e. contact with people who control first order resources) (Boissevain 1969, 380); and as someone who serves "as an intermediary to arrange an exchange or transfer between two parties who are not in direct contact" (Scott 1972, 95-96). Silverman (1965, 173) distinguishes between 'mediator' and 'intermediary' and stresses the importance of seeing mediators not just as individuals who function as links or means of contact between systems but who also perform functions that are of direct importance (critical) to these systems. The mediator, performing the more critical role, therefore 'guards' these functions, i.e., they have near-exclusivity in performing them; exclusivity means that if the link is to be made at all between the two systems with respect to the particular function, it must be made through the mediators; Paine (1971) differentiates between 'broker'

Who intermediaries are, and how they work in Myanmar, varies. While some are connected to the government, others are closer to local communities and build on their work as underground activists during the decades of military rule. They may represent themselves as individual consultants or as leaders of NGOs, in which case the NGO may take the role as intermediary, even while dominated by an individual who possess influence over that NGO. They can be both an intermediary and a counterpart to a foreign development organisation at the same time. These are not always fixed roles because intermediaries wear different hats and oscillate between assignments and institutions which enable them to obtain multiple influences at different levels. Most are engaged in intricate networks and embody various forms of expertise. Some have actively sought out a position as intermediary; others have become involved by chance or as a consequence of their social position.

1.1. Research Questions

To elucidate the main themes of this thesis the principal research question asked is: How do intermediaries influence rule of law development assistance in Myanmar? Intermediaries' influence is observed across various areas of their engagement and will be recounted throughout the chapters of this thesis. As the example of Zaw Win Thein suggested, intermediaries influence rule of law assistance through their translation of global concepts, sometimes with the effect of angering local counterparts, which in turn can lead to greater resentment of foreign interests in a setting such as Myanmar's where

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and 'intermediary' roles but also introduces the 'middleman' to refer to a role 'of intermediary between the government agencies and the communities' (1971, 5) while 'brokers' or 'go-betweens' are people who are 'engaged in the purveyance of the values but who are not 'responsible for' them' the way a patron would be (1971, 20-21). Moreover, he suggests that depending on how the values (messages, instructions) are purveyed the individual takes on either a broker or go-between role: 'Where it is made faithfully, without manipulation or alteration, we may well speak of a go-between'. 'The concept of broker, on the other hand … while purveying values that are not his own, is also purposively making changes of emphasis and/or content' (1971, 21).

levels of trust are low.[9] They influence rule of law assistance because they are needed to mediate conflicts between development counterparts that do not share the same values and understandings. Intermediaries possess power and influence in the field because they influence others and transform the environment around them, for example, by deciding where activities are allocated and selecting who is, and who is not, invited to participate.[10]

This thesis seeks to provide a detailed exploration of those who function as intermediaries in Myanmar's rule of law landscape. Several sub-questions thus follow from my main questions. The sub-questions relate to their emergence, backgrounds, motives, methods, and activities. For example: What is the profile of intermediaries? As the example of Zaw Win Thein illustrated intermediaries have large networks, are charismatic, fluent in English, and have been educated abroad. In addition, many have a background of social or political engagements, and some experience of working for foreign development actors.[11]

Why do foreign rule of law assistance actors seek intermediaries? What social processes transform certain actors into intermediaries? Intermediaries emerged after political transition in 2011 when rule of law development projects were initiated in Myanmar. Foreign actors that lacked cultural and linguistic knowledge confessed that they were completely reliant on individuals like Zaw Win Thein, whom thus gained power and influence because they sat on the control of information, to carry out their rule of law activities. Some intermediaries capitalised on the new opportunities as they

[9] In Chapter 7 of this thesis I analyse in detail how intermediaries acted as 'trust builders' in Myanmar.
[10] Power and influence spring, for example, from a combination of personal 'charisma', the possession of large networks, and the control of knowledge. Intermediaries often possessed all of these elements. Kawanami points out that 'Power in traditional societies such as Myanmar is deeply engrained in religious and political culture, and requires a moral and other-worldly dimension in understanding its exertion in society … [and that] notions of power are much more transient and unstable compared to the Western concept of institutional authority or democratically invested power within the modern confines of the nation-state' (2009, 212). Kawanami's suggestion corresponds to the importance put on intermediaries' inter-personal networks as well as their political engagements (outlined in Chapters 4 and 6).
[11] An in-depth review of intermediaries' profiles and their capital is provided in Chapter 4.

reinvented themselves as consultants or started their own NGO's or law firms (reviewed in Chapter 6).

Whose expectations and priorities do intermediaries serve? What are their motives and goals? The answer to these questions runs throughout several of this thesis's chapters. In essence, intermediaries have motives, which involve fostering their own networks and transforming the environment, which stretch beyond the work they do for their foreign employers. Intermediaries' personal intentions have implications for how rule of law project activities are steered, how rule of law is translated, and in the end development sustainability.

The central findings of this thesis shows that intermediaries possess power and influence over the rule of law assistance field because they steer the direction of development interventions, translate global concepts selectively, and mediate and buffer complex disagreements that could be prevented if foreign development actors were more considerate toward, and knowledgeable about, local and national circumstances. Intermediaries possess power and influence over rule of law assistance in Myanmar because foreign development actors who lack cultural and linguistic knowledge are fully reliant on them to carry out their development activities and because those foreign actors are distrusted. In that setting, intermediaries become the trusted links between development counterparts.

1.1.1. 'Black-boxes' of Rule of Law Assistance

Intermediaries are pivotal to rule of law development efforts, yet their influence is little acknowledged. Without ethnographic knowledge of how intermediary roles are created, why actors seek them out, or how they affect development processes, the way foreign

supported rule of law assistance is implemented and translated in a place like Myanmar remains insufficiently understood.

While intermediaries are a known feature of development practice, they are not prominent in the anthropological scholarship that analyses such activities (Lewis and Mosse 2006, Bierschenk, Chauveau, and de Sardan 2002).[12] In the field of sociology, Halliday and Carruthers refer to the study of the intermediary space as a 'cartography of a terra incognita for social scientists' (2009, 27). Such lack of focus on the 'middle' (Merry 2006a, 2006b) is also what I identify as the 'black-box' in rule of law assistance research. Following sociologist Latour (1987) and broader science and technology studies (e.g., Kuhn 2012) this is a term that refers to a system that is viewed primarily in terms of its input and output characteristics. In other words, the 'box' itself is generally not scrutinised in this process, but rather taken for granted. A focus on rule of law intermediaries, I argue, is one productive way of opening the black box of rule of law assistance research. Such investigation cannot be done by simple descriptions of actors' institutional functions: we are facing more complex and in-depth explorations of linkages, objectives, knowledge and the translation chains that modify the rule of law model as it travels in the hands of a chain actors (Behrends, Park, and Rottenburg 2014).[13]

In particular, I situate my focus on intermediaries within the voluminous literature on rule of law assistance. Importantly, the thematic focus of my thesis is based on the assumption that the interface between 'international', 'national', and 'local' actors is the key 'technique' for rule of law making through development assistance. When I say that

[12] Scholars have sometimes sought an explanation to why intermediaries are so easily left out of analyses. Richter (1988) suggests that actors may wish to signal that they work with consensus rather than contestation and negotiation by someone in the middle. Elwert and Bierschenk (1988) suggest that intermediaries might be such a common aspect of the development scene that their importance as actors in themselves is simply forgotten. Development anthropologists have even suggested that they are not mentioned because their operations border on clandestine illegal activity (Bierschenk, Chauveau, and de Sardan 2002, De Sardan 2005).

[13] In Chapter 3 I explain the conceptualisation of the rule of law as a 'travelling model' in detail.

I am writing about the technique of construction of development, I am addressing a specific point at which development agents connect. Hence this thesis only partly reports what actually happens 'on the ground' in the form of rule of law 'projects' and 'programmes' but focusses instead on what happens at the interfaces between development counterparts. Unlike much scholarship within the field of rule of law assistance, this is an actor-oriented approach (Long 2001) to the study of a phenomenon, as opposed to the more common institutional or structural approaches. Consequently, this is not a study of 'rule of law' (or law) in Myanmar, but of the people who, as agents, populate and translate the 'technologies of social ordering' (Behrends et al. 2014, 25), including programmes, policies, and legal directives, that are implemented within the rule of law assistance field.

1.2. Theoretical Framing

The field of scholarly enquiry into rule of law assistance has remained largely dominated by lawyers who have failed to apply interdisciplinary lenses and empirical methods to analyse the fields' impact on local societies. This study seeks to provide a theoretical contribution to the field by highlighting a set of actors that has remained largely invisible within scholarly analyses of rule of law assistance. To do so, I venture into concepts and frameworks that stir debates about actors who operate in the middle between global and local norms and meanings in the fields of anthropology, development studies, and sociology.

In this section, I first present my adoption of a 'travelling models' framework for the study of rule of law assistance in Myanmar. I then relate my choice of framework to studies of 'global' to 'local' translation that also informs this thesis. Thereafter, I introduce the political anthropology of brokers, a field that provides

important insights to the study of rule of law intermediaries in Myanmar because that field has given the broker a central position of study throughout history and her characteristics and peculiarities are well portrayed (Lindquist 2015).

1.2.1. Travelling Models

In this study, I adopt a concept of 'travelling models' for the study of rule of law assistance and apply it in Myanmar. The concept positions intermediaries as central actors in the creation of new interpretations of development models that travel through processes of 'translation' to new sites.[14] It was anthropologist Richard Rottenburg's (2009) work analysing chains of translation within the development field that laid the basis for the framework that I use here. Rottenburg's original concept has been further applied by Behrends, Sung and Rottenburg (2014) in their anthropological study of development models translated for purposes of conflict management in Africa.[15]

Behrends et al. suggest that 'travelling models' represent certain ideas of reality that are created and subsequently used as apparatuses of development intervention. When models 'travel' to new sites to be promoted and operationalised, the model's supporting institutional conventions, knowledge and practices (its rationalities) are left behind (2014, 1-2). Travelling models will thus never function the way they did at their original site because they get entangled into re-inventions when they arrive at a new site 'through experimental practice and experience' (2014, 2). Hoinathy and Behrends (2014) for example show how an internationally-acclaimed and devised model of development in newly oil-exporting Chad, constructed on the belief in the 'rule of law' as a universally binding institution, translated poorly because the Chadian government had

[14] I explain my application of the theoretical framework in detail in Chapter 3.
[15] In anthropology, translation has played a prime role since its inception as a discipline because the discipline's central aim involves the understanding of different cultures which involve the translation of concepts, ideas or meanings (Hanks and Severi 2014, Rubel and Rosman 2003).

other rationalities pertaining to the rule of law: that of using the legislation for added benefits, including gaining oil revenues in order to maintain power.

The framework of travelling models applies well to the inquiry posed by this research because it suggests that models need to be re-invented through translation (see also Berger 2017, Berger and Esguerra 2017, Zimmermann 2017).[16] This is a disordered undertaking, because models do not travel smoothly; rather, they intervene in established settings that may appear 'complex' for the outside observer, for example, because the new site lacks the institutional channels of a liberal democracy (Elwert and Bierschenk 1988). Because models are translated they need to be adapted, 'conveyed, carried, picked up, called for and interpreted' by individual or collective actors that operate as 'mediators' (Behrends et al. 2014, 2-3) or 'translators' in a 'middle' space between the 'local' and 'global' (Merry 2006a, 2006b). Such notions of translation are not concerned with only linguistics and text, but with processes of transportation and transformation that happen when models travel from one place to another. In that process they are always altered and they can never be fully controlled by their senders (Berger and Esguerra 2017).

Following Callon and Latour (1981, 279), I view 'translation' in its broad sense as encompassing displacement, drifting, invention, mediation, and linkages that involve 'negotiations, intrigues, calculations, acts of persuasion and violence' (see also Callon

[16] Translation was a common feature of the colonial mindset which was also instrumental for processes of turning indigenous cultures into reproductions of the culture of the coloniser and the 'modern state' (Young 2003). During British rule over Burma, attempts to translate subjects into reproductions of British society meant that respecting local laws and customs was difficult because the Burmese system seemed completely incomprehensible to the foreigner and in opposition to the Liberal ideas, and especially the British concept of 'rule of law' (Furnivall 1948). Legislative drafting was applied as a means to order culture (Cheesman 2015). A new *Code of Regulations for the Administration of Justice* stipulated a more familiar (i.e., British) system of law and justice, including common law components of a jury and designated judge. The Moral law of Buddhist *dhamma* was transformed into a western code of law, 'literally interpreted and strictly enforced', a law that 'had no roots in the community' and was applied mechanically and literally by Burmese judges and magistrates who when in court were living in a different world from that in which they lived at home (Furnivall 1948, 133-135). However, in the interactions between colonisers and colonised, both invariably changed, so these changes can be written as translational histories. Translations break with solidified patterns of identification and become the way in which minority communities negotiate their collective identities (Saha 2012).

1980, 1986, Latour 1987). Translation empowers a few actors to represent the rest because those actors manoeuvre the 'authority to speak or act on behalf of another actor or force' (Callon and Latour 1981, 279). Translation is a manipulative act of power (Berger and Esguerra 2017) where translation is carried out for a particular purpose which becomes reflected in the meaning that is constructed in the process of translating (Callon 1986).

The framework thus highlights an understanding of the 'rule of law' as something that development actors seek to propagate and transfer, rather than an endogenous set of ideals and practices, or a 'principle of governance' that easily replicates in different political settings by 'global' actors who claim universality through international conventions, declarations, model laws and best practices (Carruthers and Halliday 2006, 533). In particular, it shifts our attention to an assessment of transformations on the ground, the global design of policies, and how the translation of these policies into local institutions may alter the understanding of rule of law.

1.2.2. 'Global' to 'Local' Translation

Emerging research within the fields of political science, anthropology, and law and globalisation analyse recursive processes of 'global' to 'local' law and justice translation.

Legal anthropologist Merry (Merry 2006a, 2006b), examines women's rights as they are defined at 'global' levels and traces their translation to the 'local' level and back through people in 'the middle'; those who vernacularize global norms to the specific national or local context, as 'translators' or 'intermediaries'.[17] What Merry helps

[17] Merry's ideas are taken up by sociologists Carruthers and Halliday (2006) in their work that shows how ideas, norms and ideologies, developed in global settings, are conveyed to local settings through intermediaries in their analysis of the translation of global insolvency scripts. The authors argue that the 'middle-space' is where 'generalizations about globalization become specified, contingent and dynamic, a moment in which the engagement of the global and local involves cooperation and contestation,

elucidate is the critical role intermediaries play in moving global models and concepts to new settings, where they also translate 'upwards' by drawing on their own background, interests and motivations. According to Merry, and similarly to what I find in Myanmar, intermediaries appropriate models and relate them to their own understandings of the model's origin and intention and the situation into which it is supposed to be immersed (see also Carruthers and Halliday 2006, Halliday and Osinsky 2006, Seidel 2017). More recently, legal anthropologist, Seidel (2017) examines rule of law promotion in South Sudan and outlines how foreign actors who were experimenting in the country's constitution-making, brought in their preferred 'global' 'technologies' in attempts to establish the rule of law. Consistent with my findings about Myanmar, Seidel finds that a set of national actors manage to use the introduced foreign technologies for their own purposes. What local actors accept, adopt, and appropriate from the international tools, she argues, depends in large part on the question of whether the offers strengthen their own position (a theme commonly recognised also in studies of cultural- and colonial brokers, see e.g., Lawrance, Osborn, and Roberts 2015, Szasz 1994). Thus, in the case of South Sudan, local actors managed to translate international instruments in ways congenial to their own power interests (see also Hammerslev 2006, Dezalay and Garth 2011, 2012).

More recently research has emerged from international relations scholars who draw on the tradition of 'norm translation' (Finnemore and Sikkink 1998, Acharya

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acceptance and resistance, adoption and adaptation'. Also Halliday and Carruthers (2009) point out that the channel through which foreign interventions flow is a narrow one, because it relies on a few intermediaries. The authors describe a process of 'recursivity' between the 'politics of enactment' and the 'politics of implementation' (see also Scribner and Slagter 2017) and argue that responsive, multi-directional and mutual influence flow between actors partaking in the development process. Such processes are both negotiated and contested and sometimes result in resistance: the 'take-up' of global ideas is often partial and selective. The local reception of global norms can include anything from hostile resistance to welcome adoption where countries will be more or less receptive depending on their own stance and power. Halliday and Carruthers stress that in the enactment of global models, power dynamics between foreign and local actors are influenced by the added complexity of intermediaries' biases, interests and capabilities and that therefore who or what intermediaries are will affect interactions and negotiations.

2004) to analyse development projects that seek to introduce rule of law as a global 'norm'. Work by Zimmerman (2017) for example, correlates with the essence of some of my central arguments. She analyses how the 'rule of law' diffuses at the local level (in Guatemala) through the implementation of foreign-assisted development projects. 'Global norms', Zimmermann argues, localise through national and local contestation, which in turn affect foreign actors recursively (ibid). Similarly, Berger (2017) illustrates how non-state justice institutions play a crucial role in the translation of global norms to local courts in Bangladesh within the framework of major rule of law assistance interventions. By emphasising the important role of 'translators', Berger argues that change (in this case the empowerment of the poor and marginalised) happens when grass-roots level fieldworkers translate transnational norms in ways that resonate with the social and political worldview that poor and marginalized people hold. Berger also highlights how actors on the ground engage in recursive (back and forward) processes of translation, thus highlighting that translation is not a one way stream from the 'global' to the 'local'.

While drawing on this scholarship, this thesis focuses more in-depth on actors who are responsible for the moving of models. By focusing on the key agents who possess influence as intermediaries I narrow the analysis down to central processes where contestation happens. Such focused exploration distinguishes it from available accounts that follow the translation of global models (Halliday and Osinsky 2006).

1.2.3. The Anthropology of Intermediaries

My study of intermediaries in Myanmar is informed by political anthropology scholarship that concerns the emergence of intermediaries as a result of certain

interventions; intermediaries' typical profiles across settings; and common challenges they have experienced throughout history.

Some of the earliest anthropological studies explore individuals who operated as intermediaries between colonial administrations and indigenous/native communities, when ideas from the 'outside' were introduced in an 'underdeveloped' setting.[18] Gluckman's (1949) seminal study of the village headman in British Central Africa describes how the headman acted as a go-between and local intermediary. The headman is described as having been in a delicate position, torn between conflicting principles, while inhabiting the space where two worlds met, thus the subject of ambivalence, in an increasingly problematic situation, as the modern political system pressured the headman to impose values and rules that were not accepted at the local level (1949, 93).[19]

The role of colonial intermediary was, however, not exclusively experienced as negative. It was also a role that could be manipulated for personal benefit, because intermediaries were not neutral transmitters of information but rather influenced colonial policy and practice with their own political and personal interests, in order to enhance their own status, wealth and power (Lawrance, Osborn, and Roberts 2015).[20]

In the white settlement of North America, Szasz (1994) describes how there was an evident need for intermediaries who possessed 'extraordinary skill', between the

[18] These studies have been criticised for depicting societies as 'locked in' in a relationship of 'encapsulated' and 'encapsulating', an influential 'top' and a peasant 'bottom', where the colonial administration influenced a rigorous hierarchy and dichotomy, limiting mediation to these linear relationships (Bierschenk et. al. 2002, 10-11). We find similar depictions in later works on globalization of law where description is often that of a top-down relationship between the 'global' and 'local' (e.g., Merry 2006) while failing to fully portray the rich blend of regulatory agents in a space that is everything but linear and structured (Scott 2001).

[19] As highlighted by my findings from Myanmar, almost seven decades later, individuals face similar conflicts, ambivalence, and problems as the development field creates pressure for the imposition of 'universal' law and values.

[20] In Chapter 4, I present my findings that relate to intermediaries' political and personal interests in the rule of law assistance field in Myanmar.

'clashing worlds' of native communities and the initial contacts by foreigners (1994, 12, 21). She describes how:

> Intermediaries became repositories of two or more cultures; they changed roles at will, in accordance with circumstances. Of necessity, their lives reflected a complexity unknown to those living within the confines of a single culture. They knew how the 'other side' thought and behaved, and they responded accordingly. Their grasp of different perspectives led all sides to value them, although not all may have trusted them. Often they walked through a network of interconnections where they alone brought some understanding among disparate peoples. These mediators, therefore, have held a distinctive position in our past and into the present. (1994, 6)

Szasz's depiction holds as true for rule of law intermediaries in Myanmar today, as does Richter's (1988) historical description of an intermediary in the 1680s encounters in New York-Iroquois relations. Through historical sources, Richter portrays the intermediary, Hilletie, who had a Dutch father and Mohawk mother (and was therefore bicultural and bilingual) and regarded as someone who 'possessed ideal credentials' for mediation and official translating duties and therefore acquired a role in provincial service (1988, 53). The theme of distrust arises as well, when eventually Hilletie was dismissed in the belief that 'she was a principal reason' Indian diplomacy was conducted 'with extraordinary division and jealousy'. She was therefore replaced with a 'good and faithful interpreter' (1988, 64).

Wolf (1956) describes the dynamic role of intermediaries in his case study from Mexico. Intermediaries, Wolf suggests, are in an exposed position because they have to 'face in two directions at once' while serving both the community and actors at the national level. As a result, intermediaries have to know how to handle potential conflicts when interests collide.[21]

Issues relating to different cultures and the role of the intermediary in bridging that cultural gap have been the concern of scholars. In De Geertz' (1960) exploration of cultural intermediaries in Indonesia it is the regional leadership that plays a 'middleman

[21] As I outline in Chapter 5, intermediaries in Myanmar often take on a role as mediators of conflicts when foreign, national and local rule of law assistance counterparts have different interests.

role'. Middlemen are key in avoiding '[t]he danger of a widening gulf' between national and local levels which, De Geertz argues, could result in passive resistance, maladjustment or even separatism:

> In such a situation, the individuals and groups who can communicate both with the urban élite and with the rural followers of a particular local tradition perform an altogether critical function. It is these groups and individuals who can 'translate' the somewhat abstract ideologies of the 'New Indonesia' into one or another of the concrete idioms of rural life and can, in return, make clear to the intelligentsia the nature of the peasantry's fears and aspirations. (De Geertz 1960, 228)

Similarly, Silverman (1965, 182) describes the mediators in the community of her study as 'carriers of national culture' because 'values and ideas filtered down through them to the rest of the community'.[22]

Gonzalez (1972) provides an early analysis of development intermediaries as she illustrates how international sources from the United States (U.S.) were channelled to the Dominican Republic via a group of individuals constituting the 'Development Association'. She outlines how these development intermediaries gained their influences within U.S.-Dominican relations due to their financial powers, access to information, and prominent networks. According to Gonzalez, and as I find also in Myanmar, development intermediaries used their capital - language skills (English and development language), foreign manners, and networks - to attract investment in the form of grants from the United States Agency for International Development (USAID), the Ford Foundation, and the World Bank (the Bank). Seeley (1985), in her study of social welfare development in a Kenyan town, similarly shows how intermediaries built up and used their relational capital in order to negotiate with both 'sides' of the development configuration. She argues that the intermediaries of her study were cautious about granting outside access to these personal networks that they had invested in. In Myanmar, where I interacted with rule of law intermediaries and gained

[22] Also, in the case of Myanmar, I find that intermediaries filter foreign ideas and 'values' to suit those of local actors better. I explore that theme in more detail in Chapter 8.

access to their networks after considerable engagement, I gained the impression that granting such access pertained more to issues of trust, i.e., whether they trust you or not, rather than not wanting to share capital because of the monopoly benefits of that capital.[23]

Bierschenk, Chauveau and de Sardan's (2002) ethnography of development intermediaries in Africa shows how such actors rose to exceptional significance, especially in relation to the redistribution and circulation of development revenue, in the aftermath of colonial independence and the introduction of aid by former colonial rulers. The intermediaries of their study resemble the profiles of the rule of law intermediaries I study in Myanmar. In common with what those authors find, rhetorical skills, organizational competence, scenographic competence, and relational capital also matter for intermediaries in Myanmar.[24]

My study of intermediaries of rule of law assistance is informed by previous theoretical work by political and economic anthropology because that scholarship focuses in some depth on the interfaces of new interventions and reveals the typical profiles of intermediaries across settings and times. In the field of rule of law assistance such detailed analysis is often lacking. In particular, we know little about what role intermediaries play, and the challenges they face, at the interfaces of different knowledge- and value systems that appear as the development industry intervenes across the globe. Below, I outline why knowledge about intermediaries is of significance

[23] I further analyse the theme of trust in Chapter 7.

[24] As I show in Chapter 8, rhetorical skills are needed because intermediaries must be able to translate and 'master the linguistic and cultural codes' at the interfaces of local- and development language (2002, 21-23) and be able to easily adapt the latest trends in development language (De Sardan 2005). Organizational competence is necessary in order to manage coordination activities within an office or association, scenographic competence refers to the capacities to showcase for the outside world the positive aspects of the aid received (Bierschenk et al. 2002, 22-23), and relational capital is the ability to build relationships and networks. The similarities between the development intermediaries in Bierschenk et al's study and in Myanmar, suggest that even though each epoch and each context generates specific types of intermediaries, (de Sardan 2005) their role remains similar.

for the field of rule of law assistance and more efficient and responsive development intervention.

1.3. Central Arguments

This thesis provides three interrelated sets of arguments that unfold along theoretical, methodological, and empirical lines. Theoretically, I argue that the conceptualisation of rule of law as a model provides better insights into the enterprise of rule of law development assistance because it shifts our thinking from one where the rule of law is seen as a global norm or principle to a product that is packaged and branded for development purposes (Taylor 2016). Such theoretical conceptualisation provides a critical perspective of the attempts to transplant what is commonly described as Western 'concepts', 'norms' or 'principles' to new settings. As this thesis argues, in that process, these concepts and norms need to be significantly translated by intermediaries because they are development models, not global or universal principles (see also Zimmermann 2017).

Although critique and a need for re-invention has been voiced in the field of rule of law assistance, examination of the ideological underpinnings of the field have remained relatively static. It is a field that continues to favour debates and ideas derived from the West, while constructing superficial regulatory instruments that stress a need for ownership, partnership and participation (Bosch 2016). Lack of success has only led to repositioning through new 'movements' (Trubek 2006) but without recognition of the particulars of processes and agents on the ground. The theoretical insights provided in this thesis relate to debates that stress the importance of sociological understandings of the law, with which legal sociologists for long have been concerned with (see e.g.,

Friedman 1975) and that are central dimensions for rule of law development so commonly ignored by rule of law development actors (Krygier 2009a, 2009b).

Methodologically this thesis argues that a focus on intermediaries is a critical vantage point from which to consider the enterprise of rule of law assistance. As called for by Baylis (2015) and other rule of law scholars (reviewed below), this thesis not only singles out individuals as methodological units of analysis but also shows that a detailed study of their experiences is a worthwhile exercise. Shifting analytical perspectives from a 'bottom' (Munger 2012a) and 'top' (Dezalay and Garth 2011) to a 'middle' space (Merry 2006a) sheds light on a group of actors who possess significant power and influence but who seldom gain recognition in formal accounts of rule of law assistance. It is through the study of intermediaries that we can start to question in more detail the complexities, rationales and fundaments of global rule of law assistance as we unpack the battles intermediaries fight while they try to introduce a global model that carries certain ideas about rule of law.

Empirically, this thesis uncovers the effect of intermediaries' activities in Myanmar during a historical moment of political transition after 2011 and before a democratically elected government was sworn in, in 2016. Studies of 'rule of law' in Myanmar have focussed more on legal and institutional reform than on seeking ethnographic insights into the field of foreign funded development assistance. While key lessons about the structure and dynamics of development assistance in Myanmar can be drawn from scholars like Ware (2012a, 2013) and Pedersen (2004, 2008), this thesis provides a more detailed investigation into a forgotten set of actors within the development field during the historical moment of the country's transition.

1.4. Site Choice

Myanmar provides a novel and emerging site to study foreign-funded rule of law assistance and the emergence of intermediaries. The introduction of global ideas of law and justice is in itself comparatively new to Myanmar, which had remained largely isolated under military rule while neighbouring countries in Southeast Asia experienced the trials and lessons of the 'third wave' of democratization and accompanying foreign assistance efforts.[25]

Especially its urban and economic centre, Yangon, provided a unique opportunity to observe rule of law development assistance as it developed and accelerated after political transition in 2011. As I immersed myself as a researcher in that setting it was evident that both new and seasoned rule of law development practitioners from across the globe wanted to be in Yangon to assist a country they had followed for years from the outside. They wanted to get 'a piece of the action': new work opportunities, development funding, exciting travel, and sometimes a high salary in an exotic and comparatively safe country that was still qualified as a 'hardship' post. As a researcher, my interest in development practitioners who are drawn to settings in 'transition' (see also Mosse 2011) follows from ethnographic perspectives that challenge the practices and implementation of development assistance (e.g., Crewe and Harrison 1998, Hancock 1989, Mosse 2011).

Also, legal scholars new and old to Myanmar, sought to grasp the various legal and institutional reforms that were happening (Crouch and Lindsey 2014b, Harding 2014).[26] Some attempted to understand Myanmar's Supreme- (Nardi and Lwin Moe

[25] For example, Vietnam and Cambodia (Gillespie 2004, Nicholson and Low 2013, Nicholson and Pitt 2012), and Indonesia (Lindsey 2007, 2014).

[26] Before transition, legal researchers focused on substantive aspects of law in Myanmar rather than foreign actors' attempts of its development. For example, Huxley's, Myint Zan's, and Cheesman's scholarship provide rich accounts of what law, rule of law, and related concepts meant during the decades

2014) or Constitutional Court (Nardi 2014, 2017, Khin Khin Oo 2017), economic law reforms (Turnell 2014, Tun 2014, Tun Zaw Mra 2014, Crouch 2017), and police reform (Selth 2013). Many took an interest in the problematic 2008 constitution (Myint Zan 2017, Williams 2017, Harding 2017) and some academics also took on a role as advocates for constitutional change, for example through the Australia Myanmar Constitutional Democracy Project (UNSW Sydney).

Scholars also sought to understand in more depth ordinary people's perceptions of 'justice' and 'rule of law' in Myanmar's ethnically diverse rural and conflict settings (e.g., Prasse-Freeman 2015). Such analyses were also sought by researchers involved in assistance projects that explored local perceptions of justice (Kyed 2017, Denney, William, and Khin Thet San 2016).

Seasoned development practitioners analysed national failure to achieve rule of law development but for the most part failed to reflect on the activities and engagement of donors involved in rule of law assistance in Myanmar (Booth 2016, Pritchard 2016). Scholarly and policy analyses of the rule of law assistance industry as it operates in Myanmar as well as in-depth studies that explore the translation of global models to the local setting in Myanmar remained underexplored.

Studying Myanmar provides insights into the enterprise of rule of law assistance in a setting that has been labelled 'authoritarian' (Linz 2000). While there is a growing body of literature that analyses the dysfunctional nature of rule of law in authoritarian settings (e.g., Balasubramaniam 2012, Pereira 2005, Rajah 2012) and especially the politics of courts and the judiciary in authoritarian regimes (Balasubramaniam 2009, Cheesman 2011, Ginsburg and Moustafa 2008, Gretchen 2005, Hilbink 2007, Moustafa 2014), few studies analyse the dynamics, particular complexities and parameters for

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Myanmar was under regime rule and during political transition (e.g., Cheesman 2011, Huxley 1987, Myint Zan 2000).

success of rule of law assistance in authoritarian settings.[27] The findings of this thesis reveal that development assistance to Myanmar after political transition in many ways resembled those applied by foreign actors during military rule. For example, foreign actors often refrain from working too closely with the government, remain unregistered, and operate informally when possible.[28]

Next, I provide an introduction to political transition as it played out in Myanmar after the general elections in 2010.

1.4.1. Myanmar's Political Transition

The setting in which foreign development actors intervened to promote rule of law was one coloured by decades rule under one of the most '(brutally) authoritarian' (Steinberg 2001, Turnell 2011) regimes under 'military dictatorship' (Shwe Lu Maung 1989a).[29] During such rule, state ideology was dominant, political opposition and ethnic minorities faced serious mistreatment and oppression, people were under intrusive surveillance, economic mismanagement often reached absurd dimensions, and human rights were systematically violated.[30]

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[27] Exceptions include Massoud's (2013) detailed account of rule of law assistance to Sudan's authoritarian regime and Ware's explorations of development assistance strategies as they have played out in Myanmar both before and after transition (Ware 2012a, 2014, 2013).

[28] I outline such strategies in detail in Chapter 5.

[29] Through its decades of grip on power, and endurance (Callahan 2010), the military has been described as 'one of the most important institutions in Myanmar politics' Maung Aung Myoe (2009, 1) and as an imperative force for upholding law and order since the time of Burmese independence from Britain in 1948 and the exit of Japanese occupation. However, as Callahan (Callahan 1998) illustrates Burma did experience a brief moment of democracy as elections with high turnouts were held 'in accordance with Western expectations of electoral systems'. To guarantee minority representation, a bicameral legislature was introduced. However, Callahan argues, 'the legacies of the colonial and wartime period gave a very different meaning to these Western-style processes' (Callahan 1998, 51). The 1947 constitution guaranteed democratic rule including an independent judiciary, but 'embodied this distrust of democracy, placing emphasis not on individual rights and limitations of state intrusions in individual lives but instead on the empowerment of the state so that the great economic disparities wrought by imperialism could be levelled' (Callahan 1998, 52).

[30] These are characteristics of a political system that sociologist and political scientist Linz through his seminal analysis of political systems would deem 'authoritarian' (Linz 2000).

After elections in 2010, Myanmar entered a historical period of political and legal change as a 'civilianized' Government was introduced in 2011 under (then) President, Thein Sein (Skidmore and Wilson 2010, 3). To claim that the new government was 'new' and 'civilian' betrays a more complex truth. Rather, it was the former generals in power who re-invented themselves as they retired from the army and changed into civilian clothes (Callahan 2012). In an attempt to describe this phenomenon, MacDonald suggests that the new configuration took on an electoral authoritarian form (2013). Thus while it is tempting to write about Myanmar's authoritarian system as a practice of the past, its residues continue to influence political and social life.[31] During my field work in 2014 and 2015, practices associated with previous military regimes were still common (see also Holliday 2013). For example, judges intimidated lawyers who attempted to observe court hearings (Interviewee #53, 25 September 2015) and Military Intelligence personnel showed up at rule of law training courses for local lawyers and politicians (personal observation, 2014).

Observers were not slow to debate the reasons behind the regime's decision to embark on a reform process (e.g., Pedersen 2014, Winston Set Aung 2014, Slater 2014). For example, Slater (2014) suggests that key reform factors can be traced to the government being out of money (which was made particularly evident in the aftermath of the destruction by Cyclone Nargis in 2008) and thus needed to have sanctions eased in order to establish links with international investors. He also elaborates on the possibility that the government might have tried to seek a balance to China's economic and political influence by approaching the international community as a way of buffering Myanmar's superpower neighbour in the north. Slater further suggests that the sitting leaders realised that popular uprising in the style of the 'Arab Spring' could

[31] That Asian democratizing states with former authoritarian regimes 'continue to have to deal with the residue of authoritarianism in their legal and administrative systems' (Cheesman 2011, 826-827) for years after transition is evident from neighbouring countries like Indonesia (see e.g., Pompe 2005). Little evidence suggests that the case of Myanmar was much different.

play out in Myanmar, something that authoritarian leaders are notoriously afraid of (Wang 2015).

The changes that happened after elections in 2010 were, however, not as sudden as some may want to suggest. Rather, they were the result of a reform process that can be traced back to the aftermath of elections in 1990 when the State Law and Order Restoration Council (SLORC) refused to transfer power to a civilian government (Taylor 2009a, Guilloux 2010) and instead announced their intention to write a new constitution before power would be handed over to an elected government.[32] In 1999, the military regime, under its new name, the State Peace and Development Council (SPDC), had stated its national objectives, policy and mission, to work towards a modern, peaceful and prosperous nation, as including political, economic, and social reforms (Maung Aung Myoe 2009, 3). And even though the army showed little signs of actually changing their behaviour, a new 'road map to democracy' was announced on 30 August 2003 (The New Light of Myanmar 31 August 2003).[33] The seven steps of the road map included suggestions on renewed work with the drafting of a new constitution, the adoption of a new constitution, after which a 'step by step

[32] On July 27, 1990, Khin Nyunt (Intelligence Chief then Secretary-1, then Prime Minister) in State LORC Declaration No. 1/90 stated that SLORC was a military government operating under martial law, that only it had legislative, executive, and judicial power, and that it would not allow a government to take over State Power 'before a government is formed in accordance with a new firm constitution drawn up according to the desires and aspirations of the people' (para 21). In the meantime SLORC reinstated its quest to protect the 'three main causes' (the non-disintegration of the Union, non-disintegration of national solidarity and ensuring perpetuity of the sovereignty, para 21 (a)) and also reinstated SLORC Declaration No 1/88 to maintain (this time with the addition of 'rule of law') 'the prevalence of law and order, the rule of law, regional peace and tranquillity' (para 21 (b)). To draft the guidelines for a new constitution, in 1992 SLORC announced that a National Convention would be set up. The Steering Committee formed to plan the convention consisted mainly of township-level officials selected by the SLORC (Human Rights Watch undated) that came together for a process that would, allegedly, take five to ten years (Diller 1997). The Convention followed strict rules, showed little patience for criticism, and members of political opposition faced lengthy prison sentences for public critique (Diller 1997). Order 5/96 of June 1996 against anyone verbally criticizing the National Convention ('The Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions') made public criticism of the National Convention illegal and punishable by up to 20 years in prison (Human Rights Watch undated). In 1995 the NLD was boycotted from the Convention after having requested to review its working procedures (Diller 1997).

[33] In essence the new road map differed little from the military's plan for transition as formulated during the 1990's (Pedersen 2008).

implementation of the process necessary for the emergence of a genuine and disciplined democratic state' could be realized through the 'holding of free and fair elections'. However, few social and economic improvements were realised after the announcement of the 2003 road map. Instead, in 2007, the military again carried out brutal crackdowns against peaceful demonstrators after Buddhist monks and others had taken to the streets to voice their discontent with the deteriorating living conditions and military rule (Taylor 2008). Democratic transition was yet to be seen and it was against a somewhat contradictory claim of commitment to change that national elections were scheduled for 2010.

The 2010 elections and the subsequent introduction of a civilianised government under the Union Solidarity Development Party (USDP) in 2011 thus prompted observers to debate the genuine nature of the regime's intentions with the introduced changes (see e.g., Lintner 2013, Singh 2013, Taylor 2012).[34] Nevertheless, the election's aftermath did open up a reform space and a unique range of opportunities were provided both political and civil-society actors and for relationships with actors outside Myanmar's borders (Macdonald 2013).

The changed political climate was followed by the relaxation of foreign sanctions (the country had for decades been subject of one of the toughest sanctions regimes globally Pedersen 2008) and in 2012 a new foreign investment law was passed that eased legal restrictions on foreign investors (Hookway 7 September 2012). Several other laws were repealed or drafted to create a legal infrastructure to support an internationalised market economy (Turnell 2014). Other notable reforms the Myanmar government embarked on included eased censorship (FESR 2012), release of political

34 Perhaps especially Lintner who, following protests in 1988, had optimistically predicted that change had come to stay and that a transfer of power would take place either through violent or peaceful means (Lintner 1989). Lintner was more sceptical after elections in 2010 and suggested that '[i]f Myanmar has embarked on some kind of transition, it still has a long way to go…' (2013, 108). Similarly, Turnell suggested that '[t]he new government has yet to do anything to suggest it is more than a façade for ongoing military control' (2011, 79).

prisoners (Burke 13 January 2012), new laws that allow trade unions and strikes (BBC News 2011), and establishing a Human Rights Commission (Liljeblad 2016, Taylor 2012).[35] The previously isolated regime re-engaged with the international community in various forms to attract foreign investment or to seek assistance with processes of political or social change (Rieffel and Fox 2013).

For rule of law assistance purposes, the political changes provided an unprecedented space for reform activities. 'Rule of law' was introduced as a model for reform advocated for by foreign development actors in a format that differed from existing political understandings and uses of 'rule of law' as a concept conflated with 'law and order' (Cheesman 2015). In Chapter 5 I review in detail how rule of law assistance emerged in Myanmar after political transition in 2011. Next, I present the scope of this study: the global field of rule of law assistance.

1.5. Scope: Rule of Law Development Assistance

In the 21st century, several international organisations have adopted rule of law assistance components of their work as ends in themselves; whether they are working in conflict, post-conflict, crisis or developing contexts. One measure of the breadth of the field is the total spend[36] on rule of law and related policy interventions.[37] Funding allocation can be further expected to rise after the adoption of United Nations (UN)

[35] Paradoxically, while the government illustrated an engagement to 'reform' through this range of activities, the carefully crafted 2008 Constitution remained an instrument for the military to control Myanmar at its will (Williams 2011a).

[36] Donor funding, even within the well-documented policy domain of the The Organisation for Economic Co-operation and Development's Development Assistance Committee (OECD DAC) is difficult to disaggregate. An indicative example is a medium-sized donor such as Australia, which in 2012 was spending AUD 371 million per annum (14.7 per cent of Australia's total bilateral aid budget) on law and justice assistance (Australian Government 2012, 5).

[37] For example, only in 2008, 2,6 billion dollars was spent by key donors for rule of law assistance (International Development Law Organization 2010); The World Bank has since 1992, devoted over 90 grants to legal and justice reform, for a total worth of over US$46.8 million, and its current justice sector assistance and reform portfolio comprises nearly 2,500 justice reform activities (World Bank Legal Vice Presidency 2009).

Sustainable Development Goal 16 on 'Peace, Justice, and Strong Institutions' which has catalysed an increased focus on rule of law and justice assistance (see e.g., Association of Southeast Asian Nations 2016b, Transparency Accountability & Participation Network 2016).

The agenda of rule of law assistance include topics as diverse as customary and non-state justice, gender equality, economic development, anti-terrorism measures, anti-corruption strategies, access to justice, conflict prevention, and human rights monitoring. Such diversity shows that rule of law assistance encompasses much more than just law. In fact, it appears as if the field includes everything that can cater to the latest development trends.[38]

In the case of Myanmar, as I outline further in Chapter 5, the meaning of 'rule of law' has come to include everything from the implementation of a legal aid system, the introduction of digitalised case management systems in court, the provision of advice on templates and principles for constitutional reform, to delivering legal advice in the field of land- and farmers' rights.[39]

The actors involved in promoting rule of law include a mix of government, NGO, military, humanitarian and commercial entities. For example, multilateral actors such as the UN, the UN Development Programme (UNDP), and the Bank, bilateral aid agencies (e.g., USAID), civil society- and non-governmental- organizations (e.g., the International Bar Association), private companies (e.g., Tetra Tech) and individual development consultants. Not long after Myanmar's political transition, such actors were quick to set up activities in the country (discussed further in Chapter 5).

[38] Following, Taylor (2016) I sometimes refer to this phenomenon as an 'industry' or 'enterprise'– in a heuristic sense – which means that I do not seek to evaluate whether rule of law assistance meets the criteria for a service industry, but seek to explain that 'rule of law' has expanded to include everything 'that sells' as it has been packaged into a 'model' that is supported by various 'technologies' (Behrends, Park, and Rottenburg 2014).

[39] Exactly how flexible foreign development actors in Myanmar are around the concept of rule of law, and why, will be explained in detail in Chapter 8.

In the rule of law assistance field, many of the complexities found in the broader aid industry are repeated, for example, those of principal-agent relationships and global entanglements of conditionality, power, and pressure (Gibson et al. 2005).[40] Before I review the field of rule of law assistance, I therefore turn to an overview and explanation of the broader field of development cooperation.[41]

1.5.1. The International Field of Development Assistance

Development policy and practice has been influenced by several political and economic events, for example, decolonization, the Cold War, and the U.S. led 'war on terror' after September 11 (Wickstead 2015). While the field has shifted in influence over time, its stated objective of helping the poor has seldom been questioned (Hancock 1989, Easterly 2006, 2008).[42]

In the 21st century, most nations of the 'global North'[43] have national organisations that work in support of development. Such nations are referred to as 'donors' and states that receive their assistance as 'recipients', 'host countries, or

[40] A common expression of such relationships is that while the general discourse is that aid is delivered in the interest of people in need (see e.g., United States Agency for International Development) (i.e. that a demand exists), significant reputational or financial gains are often to be made by 'donors' or their affiliated associations for supplying aid. For example, as the case of Myanmar illustrates, the value of rule of law reform may be strongly linked to the creation of a more favourable climate for foreign investors.
[41] The broader development field often remains unknown to rule of law practitioners who are vested in legal- rather than development - studies (Simion and Taylor 2015). Piron (2006) suggests that rule of law practitioners in general fail to take into account lessons learned or seek knowledge from other development areas. Similarly, Trubek argues that general development scholarship often stays away from legal domains (1972, 3).
[42] Such development often follows a 'uniform pattern of actions' of development motivation and justification (Rottenburg (2009). In the case of Myanmar, we see how a society is labelled 'underdeveloped' (or post-authoritarian and in need of peacebuilding). We also see a class of 'elites' wanting to modernize their society (Aung San Suu Kyi as one of Myanmar's symbolic forerunners), and there exists 'a *model* that promises to overcome underdevelopment' (e.g., rule of law) and international 'experts' ready to help implement the model, and last but not least, global organisations engaged in and ready to finance development (Rottenburg 2009, xii).
[43] More recently, some of the traditional dynamics of the development field have been shaken as nations graduating from developing status such as Indonesia (Bosch 2016) or without a history of development support, especially China, have emerged as major donors (Wickstead 2015).

'partners', the latter term has been given preference as aid is increasingly being branded as a partnership (Rottenburg 2009).

According to one influential body - the Development Assistance Committee (DAC),[44] development assistance is 'government aid designed to promote the economic development and welfare of developing countries' (Organisation for Economic Co-operation and Development). Such aid is channelled via multilateral development institutions or bilaterally (Organisation for Economic Co-operation and Development). That aid is channelled bilaterally implies that a country with more resources transfer funds to one with less. Multilateral institutions, for example, the UNDP, receive resources from several donors to implement development projects in developing countries. Funds are often accompanied by technical knowledge (primarily in the form of 'experts' but also as technologies) assumed to be more advanced than what is found in the 'receiving' setting. Transactions are enhanced by normative claims of what development assistance has the possibility to achieve (see e.g., United Nations Development Programme).

It was in the aftermath of World War II that several organisations, including today's major development actors, the Bank, the International Monetary Fund (IMF), and the UN were established to deal with post-conflict reconstruction (Hjertholm and White 2000). The Marshall Plan was especially influential as it helped establish U.S. aid to Europe (Marshall). Because this period was primarily focused on post-war reconstruction, development thinking came to be skewed towards economic development (Wickstead 2015). This was also a period when many colonies gained independence and colonial rule was substituted with aid delivered by Western nations in

[44] During the 1960's member states from the Organization for Economic Cooperation and Development (OECD) came together under U.S. leadership to found the Development Assistance Group, later renamed the Development Assistance Committee (DAC). DAC has since then provided a space for negotiations concerning bilateral development cooperation and helped define the field of development assistance as we know it today.

their former colonies (Lewis 2005). As former colonists established new aid links with their former occupied territories they were able to remain a grip on resources and continued political influence (Alesina and Dollar 2000).

Official development assistance increased during the Cold War (Radelet 2006). Often, aid funds were allocated to geopolitically interesting countries (Fleck and Kilby 2010). This meant that bilateral aid was sometimes directed towards authoritarian regimes, such as Indonesia, the Philippines, and Zaire that had declared themselves anti-communist, especially by the U.S. (Fleck and Kilby 2010).

The 1970s saw an increase in multilateral aid and 'import support aid' as well as an enhanced focus on poverty reduction. This was also the decade when NGOs increasingly started to enter the development field (Hjertholm and White 2000). By the 1980s more donors admitted to using aid for their own commercial interests (in light of increased risk of financial crisis in the West) and structural adjustment loans, often criticized for neglecting the poor, were common (Hjertholm and White 2000).[45]

After the end of the Cold War, the focus of development aid shifted to governance and poverty reduction. An increased concern about governance meant that donors became more reluctant to support brutal regimes, as they had done for geopolitical reasons in attempts to curb the spread of communism (Hjertholm and White 2000). A poverty reduction focus meant that economics was once again significantly influencing development thinking (Wickstead 2015) and aid to lower income countries with a 'need' increased (Fleck and Kilby 2010).

[45] Concerns over a neglect for the poor came especially from the United Nations Children's' Fund which led the Bank to draft a new policy for the poor that was presented in the 1990 World Development Report. Hjertholm and White emphasize the influence of the Bank on development policy and thinking: 'This publication is often given as the starting point for poverty reappearing on the agenda of donor agencies (and agencies have based their strategies on that of the World Bank). As such it provides an example of how the World Bank can 'take over' activities even though the original initiative came from outside the World Bank and was initially resisted by the Bank.' (Hjertholm and White 2000, 62). In Chapter 3, I review similar Bank influence on policy within the rule of law assistance field.

A significant surge in aid delivery was seen again after September 11, 2001, as funds poured into post-conflict humanitarian intervention in the aftermaths of the U.S.'s 'war on terror' in places like Iraq and Afghanistan (Radelet 2006). Fleck and Kilby (2010) suggest that as the 'war on terror' was initiated, aid was once again allocated according to geopolitical concerns rather than 'needs', resulting in less aid for poor, but geopolitical 'unimportant', countries.

At the turn of the century, following a 2000 Millennium Summit, the UN established eight goals for international development, the Millennium Development Goals (MDGs), to be realised before 2015. The eight development goals resulted in an enhanced aid focus on poverty eradication, education, gender equality, reduction of child mortality, maternal health improvement, combating HIV/Aids and Malaria, and environmental sustainability (United Nations Millennium Project).

The new focus of aid in the 21st century resulted in complex 'North-South' and 'Rich-Poor' dynamics and discourses but also stressed 'participation', 'partnership' and 'ownership' for local actors in recipient countries (Bosch 2017) as one of the latest 'trends' (Lewis 2005) of the development field.[46] Such discourse sprang from discussions of aid effectiveness and the resulting accountability frameworks – such as the Paris Declaration on Aid Effectiveness (2005) and the Accra Agenda for Action (2008).[47] In essence, these frameworks recognise the need to work more in cooperation

[46] While the post-World War II Marshall Plan (Marshall) also stressed local ownership, donors in the years thereafter have not proved understanding of local complexities. Hjertholm and White argue that in the heavily 'donor dominated' development field, 'Although donors increasingly talk of partnership, and the need for recipient ownership, they in fact are reluctant to allow recipients more than a limited role' (Hjertholm and White 2000, 62). Further, they suggest that donor domination influences the way 'development' is perceived; as a modernist endeavour where the Western liberal democracy is the ideal that developing countries should aspire to while doing 'little to support the search for alternative models of development and even less to promote them'(Hjertholm and White 2000, 63). Such tendencies could also be observed in the rule of law assistance field in Myanmar because practitioners come with ready-made models and perceptions about what development 'looks like' while also being constrained by the reporting requirements and tracking of funds required by donor agencies' public management mindsets.
[47] In Myanmar, the Nay Pyi Taw Accord for Effective Development Cooperation draws on these regulatory instruments in an attempt to ensure development commitments that recognise Myanmar's 'unique history, values, governance systems and socio-economic circumstances' to ensure national

with 'local' actors as participating partners with 'ownership' of the development process (Bosch 2016).[48] In her case studies from Indonesia, Bosch (2016) emphasizes the importance of such perspectives for rule of law assistance that try to implement 'global' norms because the regulation of societal behaviour is 'embedded in local settings' (Bosch 2016, 13-14).[49] Bosch finds that donors, instead of following the recommendations for using host country systems in cooperation with local actors as set out in the accountability frameworks, continue to use foreign contractors for the daily management and implementation of rule of law assistance. When donors do employ Indonesians, these staff instead become intermediaries who sit above the local actors who are the intended development partners (Bosch 2016, 10, 12).[50]

In 2015 the UN adopted the ambitious '2030 Agenda for Sustainable Development' (The Global Goals for Sustainable Development). Goal 16 on 'Peace, Justice and Strong Institutions' is the result of consultative political negotiations that took in the perspectives of countries emerging from conflict and their views on the importance of the inter-linkages between justice, peace, security and development -- perspectives that for the past 20 or more years have been treated as separate entities by the 'global' community.

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ownership of the development process (The Government of the Republic of the Union of Myanmar 2013, 1).

[48] Development anthropologists have long advocated alternative development models and recognise the complexity of development interventions for 'local' actors. Long (2001), for example, suggests, that such affect the 'existing lifeworlds of the individuals and social groups affected' because the 'incorporation of new information and new discursive or cultural frames can only take place on the basis of already-existing knowledge frames and evaluative modes'. According to Long, this means that intervention is just as much a process that comes from 'below' as from 'above' which needs to be re-influenced, transformed and mediated by local actors.

[49] Bosch's critique relates to debates that stress the importance of sociological understandings of the law – something that legal sociologists have been concerned with for decades (see e.g., Friedman 1975).

[50] In Chapter 6, I present a similar finding from this thesis. Where donors in Myanmar were reluctant to allow ownership to local actors and instead recruited or created individuals and organisations that could operate as intermediaries.

1.5.2. History and Evolution of Rule of Law Assistance

The characteristics of the rule of law assistance field developed from historical struggles and 'crises' which resulted in different 'movements' (Trubek 2006). Throughout these 'movements', development actors sought to re-invent themselves and their approaches, often after a recognition of failure. Van Rooij (2009) calls the field one of 'trends', because it adopts new approaches and paradigms hastily while dismissing the old, all under the umbrella of doubting the industry's effectiveness. Organisational theorists such as Meyer (1996) explain this phenomenon as points when 'organizations are thought to be inefficient mechanisms … movements with ideas for improved accounting and control' are created (1996, 246). However, while the discourse of rule of law assistance has fluctuated over time, delivery has remained largely the same.

The various movements in the rule of law assistance field have thus escalated around the repositioning of ideas as a reaction to organisational inefficiency, and a perceived need for re-invention. However, this is not to claim that Western development actors have taken responsibility for failure. Instead, it has more often been the case that 'Third World' people are blamed 'because something is the matter with them' (de Soto 2001, 4) and especially because they lack a 'will to reform' (as suggested by Carothers 1998, for a critique, see Beard 2006).

To understand how the repositioning of the field has developed, it is necessary to review the various historical movements of rule of law assistance and uncover how these influence the scope of my study.

1.5.2.1. The Law and Development Movement

The founding story of rule of law assistance that scholars tend to reinforce starts in the U.S. in the 1960s as the 'law and development movement' (see e.g., Trubek 2006). However, as Humphreys (2010) points out, and Massoud (2013) convincingly illustrates, historicising the initiation of rule of law assistance activities as this 'movement' is not a sufficient narrative because such reform activities were extensively pursued by colonial administrations as a mode of governance. Also in colonial Burma, the scale of colonial legal and regulatory intervention was significant and has come to influence the way rule of law, the central ideology of the reforms, is understood and remembered (Callahan 2004).

As Taylor shows (2010b), the American-centricity of historicising rule of law assistance that still remains (of which e.g., Kleinfeld 2012 and, Carothers 2006a works are illustrative) is bolstered by the remarkable silence when it comes to recognising non-Western donors. Japan, for example, which is a major donor to rule of law reform in Myanmar, entered the rule of law assistance field, as Taylor argues, in a desire to provide alternative (i.e., non-Western) forms of development. Nicholson and Kuong (2014) follow with an in-depth study of Japan's different, but perhaps more efficient, approaches to rule of law assistance which the authors now term 'the East Asian model of rule of law assistance' (see also Nicholson and Low 2013).

As rule of law ideas became 'packaged' and marketed within the parameters of U.S. development projects in the 1960s, Myanmar was entering a long period of isolation under General Ne Win's nationalistic military rule (Maung Maung Gyi 1983, Shwe Lu Maung 1989a, Silverstein 1977, Steinberg 2001, Taylor 2009a). In other parts of the world, supported by American organisations, like the Ford Foundation and USAID, elite lawyers from American law schools with a vision of a future society based

on liberal ideas ventured out into international terrain. At the outset their destinations were primarily Latin American countries where they met with counterparts from the legal aristocracy (DeLisle 1999, Trubek and Galanter 1974, Dezalay and Garth 2002).

Some of the thinking that influenced the law and development movement included the perceived link between law and economic growth and the belief that other goods (e.g., social development or democracy) would follow once economic growth was a fact. Having defined such evolution as development, practices such as authoritarian rule could be accepted by liberal actors as a stage in the process that would eventually vanish, as the result of economic growth (Trubek 2006, 75). The leading 'technologies' (Behrends, Park, and Rottenburg 2014) of this movement came to include legal education and institutional transplants that legally skilled individuals channelled. By seeing law as an instrument or 'tool', lawyers defined what best symbolized progress: modern lawyers skilled in law's instrumental culture (Trubek 2006).

The law and development movement came to be criticized for its dominating American style of thinking and legal models, imposed on societies, by experts without understanding of local culture or political theory. For example, Merryman (1977) describes how the driving components, and intellectual origins behind the law and development movement, included 'the notion of social engineering through law' (1977, 461). Trubek and Galanter (1974) two legal scholars that were also active in the movement suggest that the ideas behind the law and development movement were both ethnocentric and naïve because they were based on liberal legalism as a model for law in society which assumes:

> [S]ocial and political pluralism, while in most of the Third World we find social stratification and class cleavage juxtaposed with authoritarian or totalitarian systems[,] … that state institutions are the primary locus of social control, while in much of the Third World the grip of tribe, clan and local community is far stronger than that of the nation-state [,] … that rules both reflect the interest of the vast majority of citizens and are normally internalized by them, while in many developing countries rules are imposed on the many by the few and are frequently honoured more in the breach than in the observance [, and] that courts are central actors in social control, and that they are

> relatively autonomous from political, tribal, religious, or class interests. Yet in many nations courts are neither very independent nor very important. (1974, 1081)

Lack of success led to a critical moment for law and development because legal transplants did not end up functioning in the way that was planned; they were often ignored or rejected, and legal education efforts proved to have only minor impact (see e.g. DeLisle 1999, Gardner 1980, Trubek 1972, Trubek and Galanter 1974, Upham 2002).

When changes did occur in the economic sphere, the anticipated spill-over effects on individual rights and democracy were nowhere to be seen. Similar to what Moustafa (2014, 2008) later cautioned, Trubek recalls that the 'reformers' involved in the law and development movement in the 1960s 'found themselves facing the frightening possibility … that their efforts to improve economic law and lawyering could strengthen authoritarian rule' (2006, 79).

Nevertheless, the idea of law's role in development was not abandoned. Instead, as I outline below, after some self-reflection the movement re-oriented itself and moved closer to the neighbouring field of democratisation, while staying committed to economic development. However, it still lacked any better evidence of a theory or paradigm of law's role in development to support it (Trubek 2006).

1.5.2.2. Law, Democratisation and Economic Development

As Myanmar remained under strict military control in the aftermath of the 1988 brutal crack-down on protestors (Lintner 1989), rule of law practitioners and scholars focused their attention on the challenges of democratization and constitutional reform after the fall of the Berlin wall and end of the Cold war in 1989. A new moment of reforming political and economic systems accelerated into what has been described as a 'rule of

law revival' (Carothers 2006b) that led to a capacious political and ideological use of rule of law by western European and North American donors and governments to champion preferred forms of legal or institutional reform in target countries (see e.g., Tamanaha 2004, 3), on the revival see also (Carothers 1998).

The role of law in supporting constitutional reform and democratization in post-communist states became a key focus (Carothers 2009, Czarnota, Krygier, and Sadurski 2005, Krygier and Czarnota 1999, Trubek and Galanter 1974). Practitioners found their counterparts in the new leaders of former communist states who wanted to manifest their moral commitments to democratisation, legalisation and a market economy (Davis and Trebilcock 2008, 905-906).

Krygier and Czarnota (1999) stress the important link between rule of law and constitutionalism and outline the main challenges to transition in post-communist regimes as due to the tendency to view the rule of law as involving the preparation of recipes based on certain formal characteristics while failing to recognize the values that underlie the rule of law.[51] However, such emphasis on the necessary sociological dimensions for rule of law development (Krygier 2009a, 2009b) were easily ignored by development actors. Instead, the post-Soviet states also provided a playground for testing new models of law and economic development.

Now, actors who traditionally had not been involved in law and development, for example, the IMF and the Bank, started to incorporate legal reform in their programming (Newton 2006). The 'Washington Consensus' established a link between legal reform and neoliberalism for the efficient distribution of economic resources: a functioning legal system on the one hand and privatization, foreign direct investment, open trade and marked deregulation and macroeconomic stability on the other

[51] In 2017 some of the scholars who wrote about that constitutional transition were involved in a similar enterprise in Myanmar (primarily Krygier and also Czarnota), see Australia Myanmar Constitutional Democracy Project (UNSW Sydney).

(Trebilcock and Prado 2011, 10-11). This idea of rule of law as necessary for economic growth and poverty alleviation has been prevalent ever since and is still one of the industry's driving ideas (Crouch 2017). Such prescriptions, however, did not always deliver their intended consequences and the limits of the market was increasingly recognised by both practitioners and scholars (see e.g., Trubek and Santos 2006). The Asian financial crisis in 1997 and the failure to support post-soviet states to transition further contributed to such questioning (Newton 2006, 193).[52]

The idea of rule of law as necessary for economic development was also questioned when significant economic progress took place in Asian states not considered as rule of law-abiding from a Western perspective (Antons 2003, Jayasuriya 1999, Kamarul and Tomasic 1999, McAlinn and Pejovic 2012, Peerenboom and Clarke 2007). Consequently, the awareness that rule of law might not cause, or even be necessary for, economic development took hold and several scholars embarked upon investigating the existing orthodoxy (Davis and Trebilcock 2008, 933, Ginsburg 2000, 853).

Again, as a response to recognition of failure, alternatives to existing approaches were developed. As I outline next, one such shift was seen in the legal empowerment (of the poor) movement where debates advocated a shift in focus from 'top-down' to 'bottom-up' approaches in rule of law development assistance.

[52] The complexities of a perceived link between law (in this case property rights) and economic development was seen also in Myanmar. For example, one foreign lawyer who worked on land rights (Interviewee #4, 15 May 2014) explained how, after the introduction of formal land titles, people were questioning why they would need a piece of paper when they had been farming land for years. The procedures also include the possibility to file an objection of the registration through the administrative system. Still, people would instead take matters to court and sue for trespass as a means to clear the disputed land. The result was thus that instead of introducing a simplified system people chose to take a more costly and lengthy road through court and continued to rely on customary regulation of land (see de Soto 2001 for an in-depth analysis of why Western transplants of property law fail). Such failure to grasp the reality and resilience of legal pluralism is not limited to legal reforms in Myanmar (Merry 1988, Tamanaha 2008, 2011, von Benda-Beckmann 2002).

1.5.2.3. Development Failure and 'bottom-up' Approaches

The legal empowerment (of the poor) debate sought to provide a perspective of law and development where law was used to enhance broader goals of socio-economic development and 'rights-based' development by translating ideas from the bottom-up (Golub 2006, 161) Such shift emphasized the importance of 'local' knowledge and context (van Rooij 2009) and legal pluralism (Tamanaha 2011) for rule of law development.

Economist Hernando de Soto (2001) was especially influential in promoting his ideas relating to legal empowerment and property rights for the world's poor. He suggests that it is crucial to understand local social rules and customs that operate outside the formal law in order to solve the puzzle of economic development. De Soto argues that a shift of focus that could help understand norms and 'people's law' entrenched in local beliefs, was therefore necessary, rather than drafting good-looking laws and regulations 'on paper' (2001, 164, 166). These ideas influenced new models that were intended to provide justice for the poor (see e.g., Dias and Honwana Welch 2009) and access to justice (see e.g., Meene and van Rooij 2008). Golub describes the legal empowerment alternative as providing a perspective of law and development where law was used to enhance broader goals of socio-economic development, an alternative to the state centric rule-of-law orthodoxy, which, he argues, would result in 'rights-based' development. The legal empowerment alternative thus prioritized civil society support and grass roots' needs (Golub 2006, 161).

As a result, law came to be seen both in combination with human rights, courts, property rights, formalization of entitlements, prosecution of corruption, and public order, and as a development objective in itself (Kennedy 2006). Kennedy (2006, 157) proposes that it was Sen's ideas of freedom and human flourishing that 'directly placed

a new spotlight on law, as both a means to secure freedom, and as a definition of freedom … law, and particularly human rights, was part of the *definition* of development'.[53]

Law's new-found status as part of development policy also resulted in several new ideas about, and approaches toward, rule of law. These informed the increase in new actors, as well as an expansion of activities over various domains (see e.g., Kleinfeld 2005, 16). That expansion, as I explain below, would accelerate even further in the aftermath of the events on 11 September 2001.[54]

1.5.2.4. Rule of Law for Peace and Security

Rule of law assistance significantly increased in quantum and scope after the events of 11 September 2001 (see e.g., Baylis 2008, Samuels 2006, Stromseth, Wippman, and Brooks 2006). Rule of law came to be seen as important for peace and security, and rule of law components thus incorporated into most peacekeeping and peace building activities (Sannerholm et al. 2012). As a result rule of law assistance was extended to areas with a clear link to security: criminal law reform, police reform, prison reform and judicial reform (Call and Wyeth 2008, Sannerholm 2012).

Carothers (Carothers 2006a) describes how such developments helped turn the rule of law field into a global phenomenon that seeks to aid everything from democratization and economic development to peace and conflict prevention. Kleinfeld (2005, 16), and also Jensen (2003, 1-2), argue that the effect of such expansion is that rule of law has come to be viewed as different sectors, classified by activities, that centre around specific institutions and topical areas of reform, rather than as a coherent

[53] In Chapter 3, I outline in more detail how Sen's ideas have come to influence the rule of law assistance field.
[54] In Chapter 5, I outline the way in which that expansion was replicated once more in Myanmar after political transition in 2011.

concept.[55] A tacit acknowledgement of the conceptual incoherence is also recognised by the practitioners that today populate the field (Simion and Taylor 2015, Desai 2016).

The new century saw no signs of decrease in rule of law assistance (Samuels 2006) and the conceptual incoherence is likely to continue with the adoption of the Sustainable Development Goals in 2015 that emphasise the importance of 'justice' and 'rule of law' for global peace and institutional development (Bergling and Jin 2015, Arajärvi 2017, Desai and Schomerus 2018). The Goals however remain indeterminate of the concepts that they seek to measure in member states (Desai and Schomerus 2018).

What can be crystallised from the overview above is that throughout the rule of law assistance field's various 'movements', although critique and a need for re-invention has been voiced, the ideological underpinnings of the field have remained relatively static because the field continues to favour debates and ideas derived from the West.

Next, I further develop some of the most voiced critique of the global enterprise of rule of law assistance and introduce studies that have proposed a focus on individuals involved in rule of law as an exercise with potential for furthering knowledge of the field.

1.6. Rule of Law Intermediaries: Current state of Knowledge

My study of intermediaries adds to the emerging research that addresses rule of law development processes through a lens that puts individuals at the centre of analysis. Such analysis can be read as a response to the more common tendency to analyse the

[55] I provide a similar argument in Chapter 3 of this thesis, but rather suggest that the packaging and branding of rule of law (Taylor 2016) into a development 'model', that are supported by various 'technologies' (Behrends, Park, and Rottenburg 2014), is suggestive of the difficulty of transplanting Western concepts, norms or ideals without them being translated and mediated (see also Zimmermann 2017).

rule of law assistance field from the perspective of formal and institutional accounts. A move beyond 'law on the books' (Friedman 1975, Selznick 1969) to the social interactions between individuals, which constitute de facto agencies, within a space where the law is remade, reformed or created, positioned 'in the middle [in] society itself … where … the centre of gravity of legal development lies' (Ehrlich 1936, lix) is necessary to provide better insights to rule of law assistance.

I develop this section with a background review of common critiques of rule of law assistance and then outline why and how the study of intermediaries further knowledge of the field.

1.6.1. Common Critiques of Rule of Law Assistance

The results of rule of law assistance efforts have often been deemed disappointing (Taylor 2009b). The reasons for failure have been explained with reference to the predominant focus on assisting state systems and processes, including the drafting and enacting of laws, training and equipping legal professionals, and enhancing the efficiency of courts and case managing systems. In 2006 Trubek and Santos argued that development agencies continue to base their rule of law assistance on 'one basic model that should be followed by all developing and transition countries' (2006, 17).[56] Similarly, Upham (2006, 76) suggests that the formalist approaches to rule of law assistance result in law being seen as a technology rather than as part of politics or sociology. Therefore 'reformers are focusing on the expected result – the formalist rule of law – rather than the new institutions' interaction with the social context'. Channell (2006, 100) argues that the prevailing assumption that laws and the government are

[56] Already in 1972, Trubek, one of the law and developments' main proponents suggested that the 'core conception' of 'the relationship between law and development … is more concerned with the exportation of Western systems than with efforts to understand the legal life of the Third World' (Trubek 1972, 11).

important is missing the mark in terms of conducting reform processes that take into account local level processes, actors, and legal plurality.

Peerenboom (2009, 5, 7) emphasises a need to acknowledge the specific context setting when designing rule of law reform and the enduring tendency 'to treat rule of law and rule of law promotion as a single entity or enterprise, and to rely on generally applicable, and hence overly simple, highly reductive and exceedingly abstract, international best practices and off-the-shelf rule of law toolkits'. For the most part, however, legal scholars have provided critiques rather than new approaches for the study of rule of law assistance. Suggestions for genuinely new approaches have instead come from scholars of law and sociology (see e.g., Krygier 2006, 2009a, 2009b).

One shift towards new understandings of the field is found in the literature that focuses on 'the *people* involved' in rule of law assistance, which recognizes that they are important subjects of inquiry (Baylis 2008, 2015, 2014, Simion and Taylor 2015). Following Baylis and the studies presented below that have identified the individuals involved as central for our understanding of 'success' and 'failure' in the field of foreign assisted rule of law reform, I argue that a focus on intermediaries brings in a sociological understanding of rule of law assistance because it focuses the analysis on individuals responsible for various forms of legal translation and appropriation. A focus on intermediaries sheds light on the importance of local level processes, actors, and legal plurality. Critiques of a legal formalist focus and a lack of recipient perspective can thus be better understood through an exploration of rule of law intermediaries.

1.6.2. Individuals Involved in Rule of Law Assistance

This section provides an overview of the handful of studies that, broadly classified, focus either on lawyers as brokers in transnational settings, locally embedded lawyer

activists/cause lawyers or the myriad of agents that translate global ideas to local levels within the field of rule of law assistance. As this study also finds, the lines between global and local processes and the roles individuals have that inhabit these spaces often blur.

Dezalay and Garth draw on theoretical insights from sociologist Bourdieu to explore how transnational legal processes interact with national levels through elite and 'cosmopolitan' 'lawyer brokers' who, they argue, become active importers of rule of law at sites of 'competition' (Dezalay and Garth 1997, 2002, 2010, 2011, 2012).[57] They suggest that there is a need for such focus in order to explain successes and failures in exporting the rule of law (2011, 4). These brokers, they argue, are much more than 'neutral translators [as] [t]hey use the various forms of capital (social, legal, political, economic) that they have already accumulated to build their credibility (and power) as brokers' and may provide 'the full menu of multiple services as go-between but also as translators and mediators' (2011, 5, 260, see also Halliday, Karpik, and Feeley 2007). My study of intermediaries in Myanmar uncovers similar tendencies as intermediaries move between roles that involve mediation, translation and go-between. However, Dezalay and Garth's focus on elite lawyers differs from the typical rule of law intermediary I find in Myanmar (see Chapter 2). A focus on elite lawyers does not fit naturally in a setting like Myanmar, where for decades lawyers have been treated as a force of opposition, important to eliminate (Cheesman 2015). Although after 2011 lawyers have more opportunity to access spaces of power, many remain local activists. Munger (Munger 2012b) is sceptical of Dezalay and Garth's focus, which he argues influences their understanding of globalisation as a top-down enterprise. Munger's response is to focus on the other 'end' which he defines as locally-embedded 'cause lawyers' who use the language and norms of rule of law to instigate and influence social change in their home

[57] See also (Kisilowski 2015) for a 'Bourdieuian' analysis of the role of lawyers as rule of law brokers in Poland's authoritarian regime.

arenas in the confined setting of Thailand's authoritarian rule (see also Munger 2012a, Cheesman and Kyaw Min San 2014)

Both Munger and Dezalay and Garth start from their respective 'ends' – the 'global' or the 'local' – and such dichotomies are problematic because they may isolate those spaces as 'encapsulated societies'. In a sense they recognise processes in the 'middle' but still often glue together (and 'black-box') relationships, however these are characterised. For example, as this thesis finds, 'local' views and understandings, in the case of development assistance, are often a distorted understanding of the intermediary or 'middle' view. This thesis focuses on the processes in the 'middle', rather than at the 'local' (Bosch 2016, Nicholson and Low 2013) or 'international' levels.

Professor of land law and development, Manji (2006) draws on Latour's sociology of science to study the work of lawyers in the political enterprise of land reform in Africa. Network theory enhances her analysis of how the 'global' connects to 'local' through a 'juridical link' enabled by donors (2006, 65-73). She thus emphasises that there are significant activities happening in the space between the global and local where 'legal professionals' use their "entrepreneurial activities" to put law at the centre place of land reform' (2006, 73, 82). Zürn, Nollkaemper, and Peerenboom (2012) set out to analyse rule of law 'dynamics' as they build on Halliday and Carruthers' (2006) work to 'bring together the normative perspective of law with the analytical perspectives of social sciences' (2012, 3). Following Zürn et al., rule of law 'dynamics' involve the promoter perspective (rule of law promotion), the recipient perspective ('conversion'), and a link between the two ('diffusion') (2012, 4-5). However, a detailed analysis of the link between promotion and reception, such as Manji provides, is lacking. Like Manji's and also Halliday and Carruther's scholarship (2007) a key contribution of my study of rule of law intermediaries are the lessons we can learn about processes of diffusion that take place during attempts to adapt global norms to the national context, because

intermediaries remake 'transnational ideas in local terms' and 'negotiate the middle in a field of power and opportunity' (Merry 2006a, 42).

Writing about the rule of law assistance field, Hammerslev (2006), like Dezalay and Garth, draws on Bourdieu to examine how agents behind the American Bar Association's Central European and Eurasian Law Initiative (CEELI) managed to influence legal change in Bulgaria after the Cold War. He shows how the national legal 'field' was transformed as a result of individuals using their political and social capital to introduce foreign ideas 'into … national battles' by drawing on 'the international capital gained from the international investments in the national fields' (2006, 75). Hammerslev finds that 'global principles' were 'imported … by people working as … brokers of these ideas' (2006, 75). According to Hammerslev, the foreign intervener of his study, CEELI, deliberately worked with people at the local level 'who were able to take power away from the previous regime' and with people who agreed on the priorities of the development of law' (2006, 75). I find a similar pattern in my study of rule of law intermediaries in Myanmar after political transition.[58]

Gillespie (2004) frames the actors in his study of rule of law reform in Vietnam as 'agents for change' and argues that any account of law reform must include a discussion about the individuals responsible for the state-society relationships that the change seek to improve. I agree that a framing of individuals as 'agents for change' is useful for our understanding of why certain global ideas gain traction at local levels (see also Finnemore and Sikkink's (1998) analysis of 'norm entrepreneurs'). However, such framing is incomplete for purposes of gaining a better understanding of the challenges that the foreign import of 'ideas' experience in the rule of law assistance field.

[58] As I further illustrate in Chapter 4, for example, foreign actors that were present in Myanmar during authoritarian rule viewed their work there as one of preparing such 'change agents' by introducing 'foreign ideas' for when transition was one day to come. In Myanmar's nationalistic setting, however, the links with foreign actors were not seen solely in a positive light by surrounding actors, who were themselves influenced by decades of authoritarian politics that included the promotion of nationalism. I address this theme in more detail in Chapter 7.

Gillespie's finding that 'elite level legal and economic technocrats working in central ministries are responsible for importing borrowed law and adapting it to Vietnamese conditions' may well be a contrast to, what he suggests, is a tendency to 'treat legal ideas as technical fragments unconstrained by cultural borders [with] an unwavering conviction in the instrumental power of law to engineer social change' (2004, 163). However, Gillespie does not reveal much about the actual challenges of translation and the conflicts that these 'agents' need to navigate as foreign actors pressure staff in central ministries who are equally pressured by their minister. In their exploration of court-oriented reforms in Vietnam, Nicholson and Low (2013, 7) also find that local donor employees act as 'interlocutors' between foreign donors and state actors and thus provide 'insights into what does and does not work'. Although these 'interlocutors' are not put at the centre of their analysis, their study contributes to their increased recognition of individual agents as important for furthering understanding of rule of law assistance.

1.7. Significance

The overview above illustrates that there is emerging research on the role of individuals involved in global rule of law assistance. However, as this thesis argues, more in-depth accounts are needed in order to understand their influence over rule of law development. A key significance of this study is thus that it collects and communicates the voices of a set of development agents who are neither 'local' nor 'global' but in-between. This thesis seeks to highlight the significance of rule of law intermediaries, their background, knowledge, challenges and strategies through an in-depth enquiry in an 'Asian context' of the kind called for by Bierchenk et al. (2002).

My research places actors in Myanmar at the centre of analysis. Due to the frequent designation of Myanmar as a pariah state by the international community – renewed again in 2017-18 as global actors condemned the current government's handling of the human rights crisis in Rakhine, external analysis has often been through the lens of how Myanmar's government measures up (or rather, fails to measure up) to international legal standards. There has been much reporting on the material context but little focus on how actors in Myanmar themselves describe their ideas or experiences (for an exception, see e.g., Skidmore 2004, Wells 2018).

My work contributes to the anthropological study of brokers and intermediaries by providing a largely undocumented picture of their experiences from Myanmar. Also, by highlighting the effect of intermediaries' activities during a historical moment of political transition in Myanmar, I provide empirical insights and highlight issues around the translation of rule of law to a military regime in transition. Such inquiry is important because donors continue to apply development models regardless of political reality.

My inductive approach to the study of intermediaries (see Chapter 2) contributes to the study of intermediaries because it refrains from attempts to pre-define who these central actors are. Instead, I discovered that the intermediary role is fluid and complex. For example, intermediaries are caught in onerous situations where they perceive a need to mediate. Intermediaries also acquire funding allocations to their local areas and to causes they support, for example; a court reform project or rule of law workshops.[59] I also uncovered how intermediaries are entangled as conceptual translators. Sometimes they perform the function of 'broker', 'mediator' and 'translator' in conjuncture. My inductive method and intermediaries self-identifications was also an interesting contrast to the suggestion made by Bierschenk et al. (2002) that individuals

[59] Such activities are what development anthropologists Bierschenk et al. (2002) refer to as 'development brokerage'. In Myanmar the role of broker (*pweza* or *pwezar*), however, had derogatory connotations for the actors involved because it suggested that the individual was interested in economic gains. A preferred description, suggested by a local lawyer, was 'a person who act effort for someone'.

seldom define themselves as intermediaries: here we see that they actually do, to various extents. 'Intermediary' is thus a concept used not only as a lens but also as a label that actors use to describe themselves and what they do in Myanmar.

Like other empirical scholarship, my project seeks to move beyond a top-down exploration of the impact of rule of law assistance on nation-states or local actors. Rather, it undertakes a more finely-grained analysis of the ways in which intermediary actors recursively influence processes of rule of law assistance. My study thus contributes to the development of a thicker, more nuanced, multi-layered and contextual, understanding of rule of law as it travels from the global' to the 'local' level, and back again. Through the study of rule of law intermediaries, a conceptual framework emerges that can be applied in other settings where development assistance takes place to explain how rule of law making at new sites involves -- and requires - contestation, translation and adaptation.

By asking questions about intermediaries and studying them in detail, this study seeks to provide a critical perspective of rule of law development assistance. I argue that it is through individuals' insights that can we gain an understanding of what is happening in the confined spaces, places and meetings that official donor reports seldom mention (Hancock 1989). Unveiling the challenges faced by rule of law intermediaries can reveal more about the things that end up going 'wrong' in the field of foreign assisted rule of law reform because intermediaries are Janus-faced (Hasegawa 2009) and possess insights to the challenges both 'sides' of the development configuration face. Unlocking their knowledge and the 'black-boxes' of rule of law 'making' in complex societies provide insights to how foreign led interventions can be conducted more effectively. If the donor community is willing to move away from the predominant tendency to listen to international 'expertise' and knowledge (Crewe and Harrison 1998) and also take into account intermediaries' accounts, interventions may

be designed that better benefit people who live in societies where a well-functioning system of rule of law is lacking.

1.8. Thesis Overview

The central inquiry of this thesis concerns how intermediaries influence rule of law assistance in Myanmar. To answer that central question, this thesis proceeds as follows.

Chapter 2 outline the methodology and methods used for this study. I describe the rationales for choosing Myanmar as a case study location and introduce the typology of intermediaries that I discovered through in-depth empirical research. The chapter thus answers my research question: Who is an intermediary?

Chapter 3 theorises 'rule of law' as a 'travelling model' that informs development assistance on the ground in Myanmar. I suggest that such conceptualisation can serve as a contrast to the prevailing view of the rule of law as a principle of governance or an endogenous set of ideals and practices. Importantly, if rule of law is conceptualised as a 'travelling model' insights can be gained of the processes that are required to ensure that the model gains traction in new terrain. The local adaptation and translation, which intermediaries engage in, is key for success in rule of law development attempts. My take on the 'rule of law' as a 'travelling model' rather than global norm or principle emphasises the 'mediated' processes needed for the model to be 'picked up' at new sites. The chapter concludes that in Myanmar where political, cultural and social norms are fluid, the implementation of the global rule of law model implies unintended consequences, if local context, authority, and power relations are overlooked. Intermediaries are positioned at the forefront in processes that involve the reformulating of models as they travel to new settings.

Chapter 4 answers a set of central questions that concern intermediaries' backgrounds, profiles, networks, and self-perceptions. It suggests that intermediaries' backgrounds are important to understand as they give an indication of who they respond to as well as what their strategies and interests are. The chapter explores how intermediaries accumulated foreign and social capital during military rule. It argues that such capital became key for their positioning and abilities to operate as rule of law intermediaries in Myanmar. The chapter concludes that while rule of law intermediaries' access to international capital helped 'amplify' their work on rights-related issues at home, the use of foreign capital was not solely to intermediaries' benefit: existing distrust of foreign interests affected the value of their capital. This ambivalence led intermediaries to apply different strategies to hide their connections to foreign actors. Still, they needed to be in a position where they could use their networked resources to channel aid money or development activities to local levels, in order to gain political influence.

Chapter 5 present the field of rule of law assistance as it established in Myanmar after 2011. It answers my research question: What social processes transform certain actors into intermediaries? Myanmar conforms to theories about the emergence of intermediaries which posit that, the catalyst for the emergence of intermediaries is often a process of political change. The chapter concludes that because international, national, and local understandings and approaches to rule of law development differed and were challenging to align, intermediaries emerged to mediate friction about issues such as: monetary compensation; applications for funding; the best approach to achieve rule of law development; donor involvement in local affairs; and institutional constraints that, according to intermediaries, foreign actors were not able to fully grasp.

Chapter 6 explores in detail how intermediaries emerged in response to opportunities that emerged in Myanmar's young rule of law assistance field. I suggest

that there were various dynamics that contributed to intermediaries' emergence, as they were both recruited by foreign actors and drew on their own capital as they carved out a space in the rule of law assistance field. The central questions the chapter addresses are thus, on the one hand: What leads foreign rule of law actors to seek intermediaries? Why do foreign to rule of law actors view intermediaries as important? And, how do foreign rule of law actors find intermediaries? From the intermediaries' perspective I ask, on the other hand, how do intermediaries compete for the rule of law assistance space? And, how does one become an intermediary? These questions are important because they reveal structural aspects of development aid as it operates in the rule of law sphere: for example, who gets to be included, who gets to exert influence, and why? The chapter concludes that intermediaries have emerged in the rule of law assistance field in Myanmar because foreign development actors need the assistance of individuals who understood their aims and objectives, to navigate unfamiliar systems, and who could reach out to potential counterparts as intermediaries of the rule of law model.

Chapter 7 outlines the expressed need for a trusted link between foreign practitioners and local and national counterparts. It analyses the role intermediaries play in becoming trust- and relationship-builders. It shows how intermediaries were pivotal for foreign rule of law actors' development efforts and how foreign actors, both consciously and unconsciously, made use of intermediaries' agency for their aims and objectives. The chapter discusses aspects of interpersonal and institutional trust and distrust in Myanmar and seeks historical explanations of how past regime practices, including national policies of isolation and the external sanctions regime, resulted in distrust of foreign actors and foreign-influenced policies. The chapter concludes that trust and relationship building can be seen as a prerequisite for successful rule of law assistance and is the focus of much donor effort as they attempt to build trust with local counterparts in Myanmar. However, because foreign actors cannot supply prior proof

of trust, it is the known actors, such as intermediaries, who instead take on the role as trust builders. While doing so, however, intermediaries are repeatedly criticised for being too close to foreigners and their interests.

Chapter 8 analyses how intermediaries vernacularize the rule of law model in Myanmar. The research question the chapter seeks to answer is: How do intermediaries translate the global rule of law model in Myanmar? The chapter highlights the main translation challenges rule of law practitioners experience. It presents intermediaries' insider perspectives of how they translate the rule of law in Myanmar. By analysing the strategies intermediaries use, the chapter concludes that intermediaries become powerful in their role as translators. Intermediaries do not just mobilize their contacts and use their local language skills – they also buffer conversations in which the speakers are mutually incomprehensible and substitute content where they consider this necessary.

Chapter 9 finally outlines this study's contributions and implications for theory and practice. It presents central findings and the arguments made based on those. The chapter concludes by highlighting this study's limitations and potentials for further research that can advance scholarly enquiry into the field of rule of law assistance.

Chapter 2. Finding Rule of Law Intermediaries in Myanmar: Methodology and Methods

> He [the intermediary] is the nexus, or one point, between us and the world. He is the link between this international body and engagement with real people with real problems. Few internationals in all these organisations know how to get to them and how. I would not know who to call the way he does. It would be hard to find someone who could do it as good as him, he has it in his DNA. He has one foot in and one foot out at the same time. A bit schizophrenic and difficult … he is at the interface (Interviewee #20, 30 September 2014)

When I asked a foreign rule of law programme manager who he relied on to reach out to counterparts, who his 'key player' was, and what that person did, he responded with the 'nexus' point in in the quote above. I asked such questions for the purpose of locating individuals that played an intermediary role in Myanmar's rule of law assistance field.

I was able to approach representatives from foreign organisations after I had conducted an initial mapping of rule of law actors. Based on initial hints at actors with a presence in Myanmar, I searched the internet and followed the announcements made in the Myanmar Law Google Group[60] for more information. However, as on-line information was scarce at the time, informal interviews helped in identifying rule of law assistance actors. I sketched a map of international, national, and local rule of law assistance actors and their activities. I used the mapping to locate the projects within which intermediaries operated, rather than make the projects the direct focus of my study.

[60] For example, in August 2013 announcement was made that U.S. consultancy firm Tetra Tech sought candidates for 'Justice Sector Positions in Myanmar' for various long-term positions for the USAID-funded 'Promoting the Rule of Law Project in Burma' (on file with the author). On 20 November the same year, the International Bar Associations Human Rights Institute posted a job specification for an International Legal Specialist to work on a bar association development project (on file with the author). On 27 January 2014 the International Commission of Jurists announced the opening of a new Yangon office with an International Legal Adviser. The Myanmar Law Group slogan reads 'Welcome to the Myanmar Law Forum! This forum is for scholars and Myanmar watchers to share and comment on news and information about Myanmar law. I hope that this will help us to keep abreast of the latest developments and stimulate some interesting discussion' (Myanmar Law Group).

Thereafter, I sought the identified key player through other channels, in order to avoid being introduced by an employer, which could hinder the interviewees' comfort about talking openly to me. I felt as if I had hit the mark when my invitation: "Tell me about your work" or "Tell me what you do" was answered in ways that indicated that the individual viewed herself as someone 'in-between.' For example, replies would include the following self-descriptions:

> It is so difficult to understand variations in language and culture, etc. That's why you need a fixer, someone in-between, like me. (Interviewee #10, 12 May 2014)
>
> I play different roles, sometimes on the ground and sometimes the opportunities open in the middle. (Interviewee #21, 30 September 2014)
>
> I try to just being the bridge, not favouring my side. The one who like to help the one who needs help. I don't think for myself. I am not standing just for my employer. I am representing both sides- the local people and the ones who want to help us develop. I coordinate the two sides. They both need to understand that they should adjust. (Interviewee #27, 7 October 2014)

The replies all refer to typical traits found amongst intermediaries across settings and times (Lindquist 2015).

I entered the research setting with a set of open-ended questions through which I sought the individuals who 'played a role' in the rule of law assistance field in Myanmar. Intermediaries were located through interview data that described them (i.e., other people talking about them); their own biographical presentations and answers to interview questions; as well as my own personal observations. My research thus started from a 'bottom-up' approach where I used exploratory, rather than explanatory, strategies in order to help locate rule of law intermediaries. That is, for example, the reason I decided to leave out words linked to what I was after (e.g., intermediary) beforehand. Instead, I described my project as being about rule of law development more in general terms. At first, I was intimidated by such an 'inductive' (Spector et al. 2014) approach because of its exploratory nature: what if I did not find the actors I was looking for? However, the approach proved fruitful, and allowed more variation and

insights into personal perceptions than a 'deductive' and 'top-down' one with pre-determined categories of who should be defined as an intermediary.

Through my methodological approach, I found rule of law intermediaries across several institutional positions. The most common, broadly classified, included: the local lawyer; the local NGO; the locally employed staff who work for an international organisation; the government employee; and the international consultant. I am not suggesting that everyone who is employed in these roles is an intermediary, but that it is usually across these professional groups that we find individuals who perform an intermediary function. Thus, while positioned in different roles and assignments, what they all have in common is that they perform the delicate and intricate task of relating larger, globally oriented ideas, to the Myanmar locale, in a key middle position between foreign, national and local actors.

The exercise of creating labelled categories, however, to some extent required the help of a conceptual lens that I applied after I had found intermediaries through an inductive approach. Bierschenk et als' (2002, 19) approach to the study of intermediaries helped in this regard. They suggest that 'intermediary' is a 'role' that 'does not refer to a concrete status or to any official, or informal position in an institution, or to an emic notion calling on conceptions which exist at a conscious level, in the awareness of the persons involved.' Rather, they suggest, 'intermediary' is a conceptual lens that 'allows us to distance ourselves from the self-representation of actors and thus to produce analytical insights of the way actors, who are not able to perceive themselves from this angle, behave'. My inductive method attempted to avoid the application of a top-down lens and in many cases the individuals that I interviewed were very much aware and conscious of the role they played (as indicated by their self-descriptions above). However, Bierschenk et als' approach helped me to distinguish official work titles from the intermediary role and provided guidance when I experienced challenges

because research participants self-identified in ways that contradicted the impression I had of them, for example, in interview data, from those of other practitioners or from my personal observations.[61]

In this chapter I outline the methodological considerations and methods of data collection used in this study. I describe the rationales for choosing Myanmar as a case study location and introduce the various types of intermediaries of rule of law that I found in more detail. The chapter thus answers my research question: Who is an intermediary?

First, I present my approach to the study of rule of law assistance as an inter-disciplinary endeavour that was made possible through the access I managed to gain in the field. Thereafter, I present Myanmar as a field work location and my rationales for selecting that field and creating the 'site.' I also reflect on my role as an 'international' researcher in a country as new to me as for many foreign practitioners.

I also outline my selection and sampling of research participants in detail and explain how, and what types of, qualitative interviews I conducted. The chapter addresses the ethical considerations that are general for all research that involves other human beings but also more specific concerns that I encountered in Myanmar. Thereafter, I present my approach to data analysis and the use of 'in vivo' codes. Finally, this chapter ends with an introduction to the variety of rule of law

[61] For example, some individuals seemed quite eager to refer to themselves as 'brokers' or 'fixers' while it was fairly evident that they had no such influence in the rule of law community. One discovery was the difference between foreigners' willingness to self-identify as playing an intermediary function compared to nationals. For example, when describing my project to a foreign rule of law programme manager with the intent to get her to tell me about the intermediary I knew was working with them, she instead confidently retorted "Oh, someone like me!" Another one commented that: "We want to play that intermediary function", while a third one would constantly tell me that he was one of those 'fixers,' who brokered deals and that he knew people within the government. I got the impression that for many foreigners, acquiring the level of trust needed to play a bridging role was something desirable and something they were proud of (I explore the theme of trust further in Chapter 7). For nationals, the situation was slightly different, as they would not necessarily describe the role as something they aspired to.

intermediaries that I found in Myanmar based on the methodological choices this chapter introduces.

2.1. An Inter-disciplinary Study of Rule of Law Assistance

My research approach attempts to provide an inter-disciplinary dialogue between law, sociology and ethnography (Flood 2005). A qualitative methodology was thus suitable for my analysis, one that sought an understanding of 'meanings, concepts, definitions, characteristics, metaphors, symbols, and descriptions' (Berg 1989, 2) that surrounded individuals and their experiences. Common research approaches that accompany a qualitative methodology include the case study and ethnography. This project started out as a case study but came to be significantly informed also by ethnographic methods, due to the access I gained to the field.

Yin describes the case study as a framework to empirically investigate a complex social phenomenon within a 'real-life' setting (Yin 2003, 1-2, 13-14). The 'social phenomena' of my study were the intermediary actors embedded within the space of rule of law assistance in Myanmar. It could be asked whether my study focused on one group only, 'the rule of law community in Yangon' or 'rule of law intermediaries in Yangon.' In the end, perhaps it better reflects the tensions between two distinct groups 'the foreign community of practitioners' and 'rule of law intermediaries' that both tried their best to gather under a common cause as the 'rule of law community.' The decision to adopt a qualitative case study approach (and to focus on the experiences of a single country) reflects my belief in the importance of developing nuanced and grounded understandings of rule of law assistance that consider how these processes are given meaning in specific local contexts (Creswell 2013).

Three kinds of data collection strategies that are usually associated with qualitative research are document analysis, interviews, and direct observation (Patton 2002, 4). The primary method of data collection used for this study was in-depth, semi-structured interviews (Edwards and Holland 2013) that I outline in more detail below. Document analysis was used to inform and understand the research context and highlight questions. The document analysis included a collection of documents that contained donor reports, overview of rule of law assistance actors, minutes of meetings, letters, project proposals, internal records, and news articles. While my research draws primarily on the qualitative data I collected in the field, the adoption of this range of methods, meant that the data collected for this thesis was triangulated and helped to ensure greater reliability of findings (Carter et al. 2014). The validity of the data was further enhanced through the collection of information from different sources, including general development practitioners, government actors, rule of law development actors, and intermediary actors.

Because I sought an in-depth understanding of the daily experiences (Madden 2010) of my research participants, in addition to interviews, and because of the access I was able to gain, I also employed ethnographic research tools such as accompaniment and observation during my eight months of field research in Myanmar. Ethnography focuses on 'the shared patterns of behaviours, language, and actions of an intact cultural group in a natural setting over a prolonged period of time' (Creswell 2013, 14). My direct interactions with individuals, and particularly with intermediaries, in the rule of law community in Yangon, informed my 'thick descriptions' (Geertz 1973) of the social groups that I studied, which means that I was able to gain an understanding for my research participants' behaviour in the specific context.

Ethnographic research accepts that findings are socially constructed and coloured by both the setting and the researcher's previous experience (Hammersley and

Atkinson 2007, Madden 2010). A constructivist worldview (Creswell 2013, 8) meant that I had to be reflexive while I developed a relationship with my subjects and while my own values were intertwined in understanding my data. As a constructivist researcher I was no longer outside the space I was studying; rather, I created findings together with my respondents.

Participant observation is a data-collection method that is useful for detecting the dynamics of interactions, behaviour, and relationships during events (Kawulich 2005). Participant observation allowed me to observe the dynamics of interactions and relationships between different actors during events that included meetings, rule of law workshops, dialogues, and interactions. This observation thus took place in locations that had relevance to my research questions where I approached participants in their own environments. As a method, observation enabled me to describe existing situations using the five senses (sound, sight, touch, smell, and taste) to learn about the contexts in which research participants operated.

Field notes that form part of my analysis were taken during field work to add context and perspective to interview and document material. My notes included information about the research setting, interactions between actors, and my travels around Myanmar together with intermediaries that sometimes allowed for 'unplanned moments' of ethnographic observation in the field (Fujii 2015). In addition I was mindful of the potential for researcher and confirmation biases. While my research approach acknowledges that there is no such thing as objectivity and that my own views will always be influential, I engaged in a process of reflexivity, essentially being self-conscious and aware (Lincoln, Lynham, and Guba 2011). For that purpose, I kept a reflexive research journal, where I documented and commented on sampling, perceptions, feelings and methods as well as decisions on shifts and modifications of my research design or questions. This helped me track my decisions, remember my

experiences and reflections on these, and how they may have influenced the final interpretation of my data (Watt 2007, Ortlipp 2008).

2.2. Myanmar as Field Work Location

As the idea of this research developed in late 2011, the prospect of conducting extended empirical field research in Myanmar was still not certain. The country had long been restricted to foreign researchers (with the exception of a few individuals who had managed to gain access) due to its history of isolation from the outside world under military rule (Selth 2010). During military rule, access to first-hand information and reliable sources were difficult to obtain (Steinberg 2001) and research was more commonly conducted by observers outside the country. The possibility of conducting the type of field work necessary for an in-depth qualitative case study, where both state- and non-state actors would be willing to share their stories and experiences, therefore seemed difficult.

Also, in 2011, Myanmar was a young transitional setting with few rule of law assistance activities taking place. As I outline further in Chapter 5, only in late 2012 and early 2013 did foreign rule of law actors start to conduct assessments and fact-finding missions to identify Myanmar's rule of law deficits and possible solutions. Thereafter, an increasing number of foreign rule of law actors established a field presence in Myanmar and initiated activities intended to promote the rule of law. Because of the activities that were developing in Myanmar at that time, the location suited my interest in transnational settings where development projects proceed at a frantic pace -- an insight I gained through my previous work as a rule of law practitioner. The emergence of a rule of law development field in Myanmar thus meant that I was able to study a setting, unlike other more established places where rule of law assistance projects have

been on-going for several years, where relationships between development counterparts were just emerging.

My initial introduction to Myanmar started with a two week scoping trip to Yangon and Nay Pyi Taw in early 2014. During that trip I wanted to get familiar with my research setting, learn how to get around town, establish contacts in the field, buy books and newspapers, and learn as much about the research context as possible. After my initial conversations, primarily with foreign practitioners, I refined my research design and interview questions in preparation for later more focused data collection (Axinn and Pearce 2006).

Thereafter, I conducted eight months of field research during 2014 and 2015, primarily in Yangon, the former capital of Myanmar, and to some extent in Nay Pyi Taw and local areas. I selected Yangon as my main research site because the head offices of rule of law assistance actors were located there, which allowed easy access to conduct interviews. The reasons for their location to the main urban, but non-capital area, ranged from a need to remain out of official government gaze to the possibility to offer their international staff acceptable schooling and housing opportunities. The head offices of local counterparts were also mainly located in Yangon. My presence in Yangon also allowed scope for observation of research participants that lived there at the time.[62]

[62] The location of my field-work to Yangon and my generalisations to rule of law assistance 'in Myanmar' merits some explanation. Myanmar is well-known for its ethnic diversity (Gravers 2007) and scholars often study different geographical localities where minorities reside, for example, the 'Karen' or 'Kachin' (Thawnghmung 2012, Sadan 2016). Therefore, few scholars would make references to phenomena that apply to the whole of 'Myanmar.' It is not my belief that by focusing on Yangon as a case study location I can make claims that apply to all peoples of Myanmar but to the tendencies of an industry that developed and was much focused on that locality.

2.2.1. My Role as a Foreign Researcher

I approached the research site as an 'international' and foreigner. Deliberately, I did not seek my first contacts amongst Myanmar individuals, but among foreign rule of law practitioners because I wanted to understand their experience of working in a new setting that was culturally and linguistically inaccessible. Also, because of my own background as a rule of law practitioner, it seemed the most realistic point from which to navigate the setting. Such positioning in the field may result in an overemphasising of the 'international' (Dezalay and Garth 2002). However, my entry point gave me an initial understanding of the challenges foreign rule of law promoters faced as they attempted to navigate a new setting and thus became reliant on intermediaries which in turn acquired a powerful role.[63]

To enter a new research setting as a foreigner can be a challenging task. However, it may also enable access that would not be possible for a citizen or someone with a previously known record of engagement in Myanmar. Soon after I initiated my field work, I gained access to a group of foreign rule of law practitioners that I, over time, managed to build up a significant level of rapport with. They were helpful in assisting me to locate and contact research participants. To manage this access, I constantly reinforced the anonymity and ethics requirements of my study. Still, I sometimes found myself in uneasy relationships, especially when I got close to someone, worried that such a relationship could compromise my independence, which in turn could be obstructive to my research (Hammersley and Atkinson 2007). As a solution, I revealed as little information about my meetings with 'friends' in the field as possible.

[63] I explore this theme in detail in Chapter 6.

Another issue that I had to reflect upon was the way I framed my own critical stance towards the development field when I spent time with development practitioners who held more optimistic views. I often felt as if I should reveal as little as possible about my research because its foundation was critical and I was worried that development practitioners would feel uncomfortable knowing that. My issue was thus not one of keeping a distance from the research setting in order to think critically about the research (Fetterman 2010), but rather to try to enter the field with a less critical mind.

I had to constantly self-reflect on my positioning in the field and in relation to different kinds of interviewees. For example, I was mindful that a researcher's appearance can be important in shaping relationships (Hammersley and Atkinson 2007). Therefore, when I met with government officials I dressed informally in order to make them feel comfortable that I was 'just a student'; so that they would feel relaxed and that our meetings would not raise suspicion if we had potential observers.

Also, being reflexive in my role as a researcher in a setting that is a former colonialized country was central for this research. As Denzin and Lincoln (2008) suggest, there may exist complexities of qualitative research with regards to colonial connotations of power, truth, and knowledge. In Myanmar such complexities are further enhanced by its decades of isolation during authoritarian rule and people's limited previous interactions with foreigners.

How to best approach local and national respondents and in what sequence was of importance for this research. As a new 'hot spot' for development I had to carefully consider the possibility that potential respondents in Myanmar would already be constrained by meetings with foreigners. At the outset I had a strategy of 'getting to know' people before I asked for a formal interview. However with foreign practitioners this proved a bad idea because people, except the ones that I built up friendly

relationships with, were reluctant to meet with me a second time. I did understand the hectic work schedule some people had but it appeared to me that their reluctance was less about being busy at work and more about feeling as if they had done their part in the exchange. Certainly that exchange is seldom on equal terms because the researcher has little means to offer something in return (Hammersley and Atkinson 2007; Madden 2010). I had the same experience with some local participants; however, many expressed their gratitude that somebody was studying their country, so I did feel to some extent that I was offering something in return for their time.

My experience of interaction with the rule of law intermediaries that became key participants was slightly different. As Fujii (2009, 34-35) describes from her field work in Rwanda, she sensed that there was a certain point at which she was accepted into the community and thus managed to collect data that would be difficult to obtain if the relationship had remained formal. Fujii (ibid) sensed her 'entry' into a more informal space as she was invited for meals and gossiping with women she was studying. I experienced a similar notion as I was invited by research participants to join travels, dinners, family lunches and pagoda visits.[64] Next, I describe these research participants in more detail.

2.3. Research Participants

My sampling was purposive and respondents were selected for specific characteristics such as their occupation or position. There are many different strategies for purposive sampling (Patton 2002); I chose what is often referred to as 'chain referral' or 'snowball sampling' (Noy 2008). Such sampling is useful in settings where it is difficult to locate individuals to study (Atkinson and Flint 2001) as you capitalize on the few you manage

[64] See (Skidmore 2003) for a description of the ethical concerns and difficulties in establishing such relationships with informants in Myanmar during military rule.

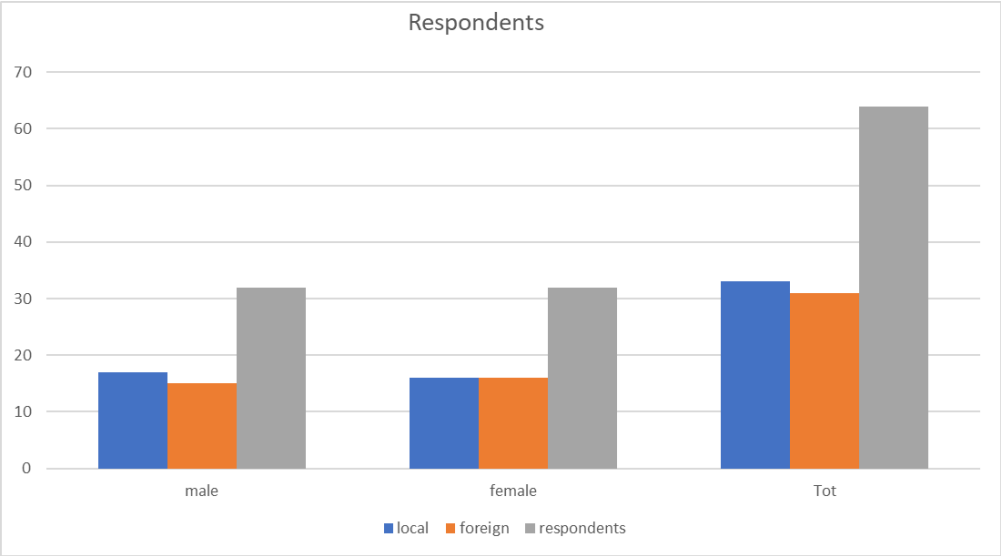
to locate and then ask them to refer you to other individuals similar to themselves. When applying purposive sampling, the issue of sample size is not easily determined. The need for a detailed description of a phenomenon (which is the main purpose of qualitative research) makes it necessary that samples are small, but small samples do not permit generalization to a larger population. However, the aim of qualitative research is not to generalize but rather to have a complete understanding of a social phenomenon.

I interviewed a total of 77 individuals who work on rule of law assistance related activities for this project. Of these, 64 are classified as respondents (and are presented in the table in Appendix A). Thirteen have been excluded because, while their responses do inform the broader research context, they were not directly relevant to the focus of this research.[65] The final respondent group for this project is thus a total of 64 practitioners.[66] They worked for multilateral and bilateral donor agencies, the Myanmar government, international and national NGO's, as local lawyers and international consultants.

Their demographic characteristics were collected as interviews were carried out. The table in Appendix A illustrates a breakdown of research participants. However, reality is not as neat as what is depicted by the table because many of my participants, especially the ones who are from Myanmar, wore multiple hats, which means that they could fall under the category of local lawyer, rule of law consultant or development practitioner working for an INGO, all at the same time. To add complexity, they are also the ones I identified as intermediaries (see below) and they sometimes described themselves primarily as such, rather than with a professional or institutional label.

[65] The interviews that I do not count were conducted with two foreign lawyers (one only partly engaged in rule of law assistance and the other in commercial legal practice), a foreign development consultant, a foreign intern at a multilateral organization, a local country representative for a development project, two government representatives, two members of parliament, a local translator, and three local lawyers.
[66] Three of the respondents described their work primarily as human rights-focused, however, all of these also linked their work to the rule of law assistance field and in 2016 they all did work that included 'rule of law' and that was linked to some of the main donors to rule of law assistance. Therefore, I have decided to include these interviews as part of the respondent group.

Of the 64 respondents, 31 were foreign practitioners (15 male and 16 female) and 24 were lawyers. They had previous experience from development work in Southeast Asia (Thai-Burma border, Thailand, Cambodia, Aceh); the Pacific Islands; Africa (South Sudan, Sierra Leone); and Hong Kong. Ten were European (five British); 11 Northern American (nine American, two Canadian): five were Australian and five were Asian. Three foreign practitioners had one parent who was either Burmese, from one of Myanmar's ethnic groups, or foreign-Burmese. 33 respondents were local practitioners (24 male and nine female) and of these, 13 were lawyers (three were judges).



Of the 33 local respondents I defined 26 as 'intermediaries.'[67] All rule of law intermediaries were bilingual and spoke English, all but four had studied abroad, several identified as belonging to ethnic minority groups, and all but six had worked with development organisations previously. Five were former political prisoners. In addition,

[67] In addition, three individuals who I was unable to access for an interview were repeatedly referred to as intermediaries in the interviews that I conducted with foreign practitioners. My personal observation from events that they attended and the interview data from foreign practitioners confirmed that they have similar profiles to those intermediaries I interviewed.

although not bilingual, five foreign respondents stood out because of their intermediary role. Often, that was the case because of their positioning through their work, for example because they were hired as foreign consultants to be placed within local or national organisations. I introduce rule of law intermediaries in more detail later in this chapter.

2.4. Qualitative Interviews

The qualitative interviews I conducted as part of my data collection were predominantly carried out face-to-face. In two cases I conducted interviews via Skype. Although there are advantages to conducting Skype interviews in qualitative research, for example, because it enables a researcher to reach geographically diverse interviewees (Lo Iacono, Symonds, and Brown 2016) I preferred personal meetings.

Interviews were conducted on a one on-one basis, and in English. My language of research merits some comment. As mentioned, I entered the research setting as a foreigner and non-fluent in Myanmar language (Burmese). The opportunities to study Myanmar language that I undertook were limited, but provided me with an understanding of how the language is structured, common expressions and phrases, and day to day basic conversational skills. From the outset, however, my research was designed to be conducted in English. One of the fundamental definitions of an 'intermediary' is an individual that is bilingual and I thus expected these people to be able to speak to me in English. If I would have been fluent in Myanmar language, I could have chosen another approach, for example, by entering the field from the 'bottom' to interview 'locals' about intermediaries. Such an approach would also have been possible if I had hired local interpreters (Fujii 2013). However, professional interpreters were, and remain, scarce in Myanmar (Dolinska 2017), costly, and the role

of interpreter was more often taken up by individuals like the intermediaries of my study.

Fujii (2013) argues that a researcher should not refrain from a research site because she lacks the right language proficiency. It could be asked whether an 'international' without Myanmar language proficiency had the cultural skills to undertake research in Myanmar that involved local participants. My stance as a researcher was that of behaving ethically, to learn about the field setting, and to convey the perspective of my research participants. I am convinced that my lack of Myanmar language proficiency provided me with a better understanding of the complex situation foreign rule of law practitioners face when they enter a new setting, especially in relation to the tricky situations I constantly faced when the intermediaries I had gotten to know, who also functioned as translators and interpreters, offered me help in getting to others who could assist me. I thus had to be mindful about becoming too reliant on the intermediaries, whose role I had set out to study, as they also potentially acted as 'gatekeepers' for me as a researcher (Edwards 2013).

Interviews were semi-structured or unstructured (Edwards and Holland 2013). Most semi-structured interviews took place at offices, cafes, hotels or restaurants. In interviews I did not seek to measure the 'truthfulness' of interviewee's accounts, but rather, I was interested in the meanings of interview material and the stories that they tell rather than 'objective reality' (Elliot 2005, 22-27).

During semi-structured interviews, I sat down with pen and paper and took careful notes which were reviewed and entered into a computer at the end of each day. The length of each interview was between one and two hours. Semi-structured interviews were based on an interview protocol that listed the questions or topics to be asked (DiCicco-Bloom and Crabtree 2006). I had two different protocols, one for rule of law practitioners and local counterparts and one for rule of law intermediaries. When

interviewing intermediaries, I asked open ended questions on themes that included aspects of their background and work, influence, issues of contestation or controversy, and translations and understandings of rule of law. With other development actors (who I did not identify as intermediaries) I asked questions about their overall work, the role the intermediary actor played and about their experiences of what influence the intermediary had on themselves and the organization.

Unstructured interviews resemble a conversation rather than the more semi-structured interview situation. Unstructured interviews allow respondents to express themselves more freely (Corbin and Morse 2003), however the conversation is always 'controlled' because the interviewer steers it towards her interests (Gray 2009). I categorise unstructured interviews to include controlled conversations where I had steered the conversation towards topics I wanted to discuss but in a more informal setting. Often I carried out such conversations with individuals who I had already interviewed in a more structured manner. This meant that they were aware of my research and why we were talking. Unstructured interviews resulted in note taking to recall the conversation quickly after it had ended.

In total I conducted 74 semi-structured interviews and approximately 28 unstructured (low estimate) interviews. Out of the 74 semi-structured interviews, all but 11 were conducted in Yangon. Other interview locations included Mandalay, Nay Pyi Taw, Europe, Australia, and two via Skype with the U.S.[68]

I also had the opportunity to engage in informed conversations about the broader development field as well as on issues related to local understandings of 'rule of law.' Gray (2009) suggests that unstructured interviews can also be of an even more

[68] I have decided to leave out the interview location from the interview citations in Appendix A because some respondents would otherwise be easily identifiable. Some unstructured interviews were held during regional travels that I participated in. However, the location of the interview should be less important in such cases as the respondents were not connected to those regional areas in a significant way.

informal, conversational character and based on unplanned set of questions that are generated during the interview. I had many opportunities to participate in such informal discussions, some that generated quick notes and some that were useful for informing me about the research setting. For example, I attended a two week Myanmar language course in Yangon in May 2014 where several participants worked on development issues for international organisations (some rule of law related). I also attended some infamous boat parties for 'expats' on Yangon River and evening events hosted by the French Institute in Yangon. These types of occasions provided fruitful opportunities to establish contacts, get a deeper insight into expat life and the development community, and get updated on the latest gossip in the rule of law field. During rule of law events in regional areas I had the opportunity to talk to local lawyers and activists about their understandings of 'rule of law' and the current transition.

Because I conducted interviews with different categories of participants my interview approaches and questions (as outlined previously) differed to some extents. For example, obtaining personal accounts of rule of law intermediaries was to some extent a methodological challenge. Generally, they were willing to talk about rule of law project activities and outputs, or even the lack of rule of law in Myanmar under 'a brutal military regime.' They were also happy to share stories about their childhoods, early political activities, and motivations for working on social causes (their interpretation of their work). However as my questions turned to the theme of their current motivations and activities in relation to the donors they work with, interviewees were more reluctant to talk. For example, some would not reveal that they worked on several contracts or that they had aspirations to be elected for political office. Corbin and Morse (2003, 336) suggest that interviewees might consider topics 'sensitive in nature' because when they are asked to 'tell their stories about some topic, they are sharing personal, often intimate aspects of their lives'. Obtaining trust and adhering to the ethics protocol of the

Australian National University was thus important in order to build a relationship where participants felt confident talking to me about these topics.

In some cases interviewees revealed that "It felt good to talk" and I understood that they felt as if the interview had enabled them to relieve emotions and considerations, for example, their annoyance with foreign donors, the constrained life in Nay Pyi Taw, or their frustrations about wanting to change careers, that they would otherwise have difficult talking about. Such 'therapeutic interviewing' requires an ethical and sensitive listener (Dempsey et al. 2016). As Dempsey et al. (2016) found, I also experienced the emotions shared with me by the interviewees as enriching my understanding of the complexities of the research setting and their experiences from living and working there. My reporting and attempt to understand emotions expressed during interviews contributed to more meaningful interpretations of my interview data (Hoffman 2007).

Among my interviewees who were from Myanmar it proved difficult to encourage interviewees to talk about other people, which was a central aspect of my research. Lee and Renzetti (1990, 512) have noted that any topic has the potential of being 'sensitive.' I soon understood that it was problematic for me as an 'outsider' to ask questions about 'insiders.' The sensitivities of an approach that included the asking about others can find its explanations in Myanmar's history of intelligence surveillance and culture of informers (see e.g., Selth 1998). Again, when I had built up a personal relationship I managed to obtain some accounts about 'other people'; more often such stories were shared during informal and unstructured conversations rather than at initial semi-formal interview situation.

2.5. Ethical Considerations

Conducting qualitative research includes consideration by the researcher on issues of engagement with research participants because its nature is to a large extent interventionist (Madison 2011). Observing research ethics is a key component of research that involves human participants (Bulmer 1982).

The requirements of the university's ethics approvals process challenged me to be assiduous in thinking through the potential risks to research participants that could potentially face physical, legal, or political risks for discussing issues of rule of law. Trust and rapport were critical factors for gaining access to participants and for developing an ethical approach to the use of information collected. The project methodology was designed to provide a secure research environment in which participants clearly understood the nature of the project, its likely outcomes and outputs, and the ways in which participants could withhold consent, withdraw consent, and otherwise control the use of their contribution during the life of the project and in publications.

Mindful of the possibly sensitive nature of my topic, I thought carefully about the way in which I recruited participants, the type of questions I asked (Madison 2011) and some of the ethical issues that arose during field work. Still, ethical problems can easily appear unexpectedly when research is carried out (Guillemin and Gillam 2004). At times, I found myself in situations that were uncomfortable and where my role as a researcher became problematic. For example, to my surprise, I was easily granted an interview meeting with a mid-level official at a government department in Nay Pyi Taw. When we were in the middle of the meeting, the official told me that she was in fact quite worried that her director might show up and spot us talking. She then reaffirmed that "We should be fine" because she would tell the director that I was a representative from the university that was there to talk about exchange education opportunities for

the staff. I saw no other option than to stay in the meeting and play along with her plan if I should need to. Luckily I managed to leave without meeting the director, but I remained worried about the potential risk I might have caused the official.

Scholars have previously described how the risks involved in conducting and participating in research in Myanmar arise fundamentally from the absence of such research due to the decades of restrictions on research within the country (Selth 2010). As the country has initiated political change an influx of foreign researchers entered Myanmar (Brooten and Metro 2014). Because of the rapid pace of the transition it may be difficult to fully gauge the risks involved for research participants (local, national and international) as well as for the researcher in such a setting. Therefore, in this 'complex terrain' an approach that is adjusted to each of Myanmar's diverse settings and cases is preferable (Brooten and Metro 2014, 1).

The general view, expressed by other foreign scholars and Myanmar nationals with whom I spoke during my initial scoping trip and at my university, was that, at the time, there was minimal risk involved in conducting research in the country and for research participants as long as the research did not involve sensitive topics (for example, national security, land confiscation, national minorities, or conflict areas). However, despite the current perception of a more forgiving political climate, I stayed aware of the possibility that the government could, for whatever reason, revert to its past behaviour (see for an overview Callahan 2009).

Consequently, I was mindful that one of the most sensitive aspects of my data collection was interviewing research participants. During the course of my research it became especially evident that some participants perceived a risk that the research could reveal insights into their positions and loyalties which in the future could have an impact on work opportunities etc. Also, some research participants were reluctant to talk to me because they had been instructed by their international employers not to do

so. For national actors especially, there were still sensitivities involved in speaking with foreign academics, and the potential reprimand for divulging information. Least reluctant to talk openly about their experiences were individuals with extensive political activist experience and most reluctant were government officials.

2.6. Data Analysis

Qualitative data analysis involves the interpretation of observations, words, and symbols in the data that consists of written texts. Upon returning from field work, I reviewed field notes, interviews and documents, and analysed these through an inductive process that involved a combination of case study analysis and a study of recurring patterns or themes in the data (Patton 2002). An inductive analysis, as opposed to a deductive, implies that findings developed through my interaction with the data, instead of me looking at the data through a pre-existing framework.

This strategy is sometimes referred to as 'coding.' I 'coded' my data through a strategy where I ascribed specific chunks of text with a label or name, the 'code' (Liamputtong 2009). For example, 'translator,' 'fixer,' 'go-between,' 'lack of trust,', 'picked-up', 'chased me up' were some of my initial codes. Many of my codes were what Saldaña (2009) terms 'in vivo' codes – that is - terms or names that my interviewees used in their narratives. I provide more examples of 'in vivo' codes in the table below.

Example of In-vivo Codes

Terms and phrases intermediaries used in their narratives	Terms and phrases foreign practitioners used in their narratives
Fixer	Link
In-between	Nexus
Coordinator behind the scenes	Peace-maker
Bridge	Point of contact
Translator	The one with all the connections
Facilitator	One foot in and one foot out
Mediator	At the interface
Diplomatic interferer	Open doors
Aligner of social and political capital	

My data analysis strategy was decided before the data collection began. During field work I initiated a preliminary analysis of my data. When reading through my notes, I wrote down comments and follow-up questions (that I was often able to ask at later interviews) about topics I found interesting. When possible, I presented my initial analysis to the intermediaries I had a long-term engagement with.[69]

To develop a manageable scheme for analysis, coding, and the classification of themes I was helped by research software (Dedoose). I read through my field notes before inserting them to the software in order to find classifications and coding categories.

After coding the data, I turned to a 'thematic' analysis of my data. By applying thematic coding, I connected and clustered the codes into broader themes and patterns

[69] My analysis was often met with a nod of recognition, especially in relation to the way I had captured the experiences of rule of law intermediaries. Foreign practitioners, however, were less understanding and found my analysis 'too theoretical'. I tried to conduct a follow-up discussion with a foreign consultant about his role as 'embodying' his foreign employers' objectives as he promoted them at the local organization he was positioned at. His only reply was: "That sounds very theoretical". I managed to upset a U.S. INGO representative when I suggested that intermediaries translate the INGO's objectives and that, as foreigners, it may be difficult for us to know exactly what happens 'on the ground.' Also my data collection confirmed that foreign practitioners and intermediaries often had different understandings of what was going on in the field.

(Liamputtong 2009). For example, codes that included labels like 'picked-up' and 'chased me up' were themed around foreign actors 'enrolment' of intermediaries, a topic I discuss in detail in Chapter 6. Codes that included words like 'translator,' 'fixer' and 'go-between' became the theme 'intermediaries.' Next, I introduce rule of law intermediaries in Myanmar in detail.

2.7. The Variety of Rule of Law Intermediaries in Myanmar

The guiding question for my search for intermediaries was: What kind of people function as intermediaries in the rule of law assistance field in Myanmar? As a result of my search for intermediary actors, in the overview that follows, I present rule of law intermediaries as they were characterized in Myanmar where I found them across several institutional roles, including: the local lawyer; the local NGO; the locally employed staff working for an international organisation; the government employee; and the international consultant. They are presented as composite sketches of actual individuals in each category, and the known facts about them. I use pseudonyms throughout this thesis to protect the identity of my participants. Nonetheless, the characteristics of each intermediary type will be familiar to both the foreign and Myanmar rule of law development actor and for the outsider these categories should offer some explanatory power.

2.7.1. The Myanmar Lawyer

In the Introduction to this study, I described the profile of a local lawyer, Zaw Win Thein, who acted as an intermediary for foreign rule of law assistance in Myanmar. Like Zaw Win Thein, Myanmar lawyers who functioned as intermediaries often had a

background in politics, or as one local lawyer told me with a smile: "We are all chance politicians" (Interviewee #49, 11 Dec 2014). However, lawyers in Myanmar were not the elite lawyers we know from Dezalay and Garths' (2010) exploration of 'lawyer brokers', nor yet the active 'political liberalism' fighters as characterised by Halliday, Karpik, and Feeley (2007). Rather, because lawyer activities were, and to some extent continue to be, a force deemed to be suitable for extermination during military rule (International Commission of Jurists 2013, Cheesman 2015) they remained vested in underground politics and local political activism.

The actual work of a lawyer in Myanmar differs from legal work in other places. Cheesman (2012), for example, shows how lawyers in Myanmar's courts operate as 'court brokers' as they facilitate the exchange of the payment of bribes rather than delivering strong legal arguments. Nevertheless, lawyers are extensively targeted by foreign development actors that seek them as counterparts or beneficiaries of rule of law assistance. The fact that they seek to work with local lawyers, regardless of the role being significantly different from what foreign practitioners are used to, is suggestive of their attempt to recreate the rule of law model's 'rationalities' (explained in full in Chapter 3) and engage in 'isomorphic mimicry' (Andrews, Pritchett, and Woolcock 2013, Pritchett, Woolcock, and Andrews 2012, Powell and Walter 1983) in Myanmar.

2.7.2. The Local NGO

Individuals (who are often intermediaries in their own right) assemble to carry out collective intermediary activities in the rule of law field (see also Massoud 2015, Munger 2014). They gather through coalitions or NGOs with head offices in Yangon that are 'run by charismatic leaders' (Interviewee #1, 6 May 2014) who are 'instrumental for driving the agendas' (Interviewee #28, 22 October 2014). NGO leaders reveal similar

backgrounds and include both lawyers and non-lawyers, with some degree of previous political engagement at the village level or as student activists.

The rationales to gather in NGOs and coalitions can be manifold. The traditional role of 'civil society' associations that play an intermediary function between the state and people (South 2008, Shigetomi 2002) may morph with the introduction of outside development aid. Bierschenk et al (2002) suggest that individuals assemble as a response to increased donor presence (because donors prefer groups over individuals) or successively transform existing coalitions to meet donor needs (see also AbouAssi 2013). The influx of foreign donors may thus result in organisations that are more likely to 'respond to the dynamics of project availability' than to promote initiatives representing 'true' local needs (2002, 24). In relation to lawyers who started their own NGOs, Dezalay and Garth's (2011) observation that lawyers who are intermediaries promote their own NGOs in order to build credibility at local levels is something I observed also in Myanmar.

Three distinct types of local rule of law NGOs were detected in Myanmar: the ones that 'came out of Nargis and then expanded into rule of law' (Interviewee #9, 23 May 2014), a common expression that indicates that the NGO was set up in the aftermath of the devastating Cyclone Nargis in 2008, which provided some room for local NGOs to mobilise without as much government control as previously (Seekins 2009). A second type was NGOs that were presented as 'local' but that were created by foreign donors and continued to operate under significant donor involvement, and a third type included more recently established local NGOs.[70]

[70] I review the emergence and operations of rule of law NGOs in Myanmar in Chapter 6, below.

2.7.3. The Local Staff

Myanmar individuals who work for foreign development actors, often referred to as 'local staff,' included a mix of lawyers and non-lawyers (see also Massoud 2015). Such individuals who are employed by foreign organisations commonly constitute an 'interface' between foreign donors and 'recipients' in developing countries (Roth 2015). In Myanmar, many had previous development experience from working on livelihoods during the decades of military rule, where they learnt core aspect of the aid industry.

Crewe and Fernando (2006) discuss the racial connotations and unequal relationships the dichotomies between 'local' and 'international' staff create. In Myanmar, I observed that the 'internationals' would often bundle together everyone who was from Myanmar as 'local' staff, while the employees themselves would variously define their role in more detail, for example, 'strategic adviser', 'programme officer', 'focal person', and 'programme assistant.' One interviewee related that he was not sure what his title meant and felt as if his work was rather to be an 'in-between person' who carried out 'translating and liaison work' (Interviewee #6, 19 May 2014).

In Myanmar, several of the 'local staff' who I categorise as rule of law intermediaries identified as belonging to one of Myanmar's ethnic minorities (for an overview see e.g., Ganesan and Hlaing). One respondent suggested that it was a deliberate policy by international organisations to only hire ethnic minorities as a way to try to mitigate direct links to a government primarily made up of the majority Bamar ethnic group. One respondent believed that it had taken him more time to build up a relationship with Government actors because he belongs to a minority ethnic group and because "The government trust the majority – Bamar" (Interviewee #6, 19 May 2014).

However, he was confident that "It depends on the individuals, when they know who I am it's OK. It all depends on individuals".[71]

2.7.4. The International Rule of Law Consultant[72]

Foreign individuals who managed to acquire a role as rule of law intermediaries in Myanmar often had some previous connection to the country through their family history and background. When self-reflecting, they saw this background as important; for example, one respondent wanted me to identify her ethnicity in the study as she "thought it matters" (Interviewee #3, 8 May 2014). Another respondent (Interviewee #1, 6 May 2014) believed that his background (with a Burmese mother) mattered for his work:

> I had a desire to do something more socially worthwhile, it was meant to happen … In some way I see my place here in a romantic way - a circle of life. This place matters to me a lot and I think my background matters to the people I work with. I tell them about my background.

Not all development consultants repatriated to Myanmar because of family connections (see Williams 2012 for a discussion on Burmese diaspora activities) but instead had a long-term engagement with the country often because they had worked out of Thailand, on the Thai-Burma border (Ware 2012a) or nearby places in South-East Asia. For example, a locally employed staff member told me that one foreign consultant became synonymous for the otherwise unknown foreign organisation he represented because "National actors don't really know about the foreign organisation but they know about the consultant from his time with another big organisation - that influences the work"

[71] I further explore the importance of personal connections and relationship building in Chapter 7.
[72] I am referring to development 'consultant' rather than 'practitioner' because the consultant often appeared to have a different degree of freedom to balance different interests. However, some of these individuals would probably refer to themselves rather as employees or practitioners of a particular organisation.

(Interviewee #6, 19 May 2014). Similarly, a local lawyer told me that he happily supports one foreign consultant because she had spent a long time - and showed an interest - in the country and because he liked her (Interviewee #17, 23 Sep 2014). The work that she was assigned to do and for what international organisation seemed to matter less. The quotes reflect that personal relationships between 'internationals' and 'locals' (Roth 2015) may be a key determinant of successful development work.[73]

Some international consultants were placed within a local- or national institution to provide 'technical expertise' (see also Roth 2015, and for a critique Easterly 2014). Such placement meant that they are able to access spaces that would otherwise be hard to gain entry to for foreigners. By being foreigners and positioned at a national or local institution they thus provided a channel and linking function, that carried different values and understandings, from the 'international' to the 'inside.' John was one such example. As a consultant for a multilateral organisation, he worked hard to gain the trust of his local colleagues but often felt as if they saw him "[A] s a spy of some sort". The suspicions about him was not improved by the fact that his international employees often communicated with him directly, instead of going through the Myanmar director (who, in theory, was supposed to be John's boss). The international donor also tried to gain influence through their direct communication with John. He was not comfortable with their approaches because he wanted to keep his independence and show loyalty to the 'Myanmar side', because he felt as if it mattered which side he was on.

[73] I further explore the dynamics and importance of such relationships in Chapter 7.

2.7.5. The Government Employee

Government employees who had studied abroad and spoke English were often positioned as intermediaries to communicate with foreign visitors and buffer their demands. In most ministries, a small group of staff spoke English better than their colleagues and therefore got 'bombarded' (Interviewee #3, 8 May 2014) with meetings with foreigners. Unlike government intermediaries that have managed to acquire a significant level of power in some countries (Halliday and Carruthers 2009), in Myanmar these individuals often felt as if they struggled in an undesirable position that involved complex translation- and mediation activities.

For example, Hla Aung Shwe worked for a government department in Nay Pyi Taw. Since the 2005 move of the capital from Yangon to the newly constructed mega city Nay Pyi Taw, many government employees like him have seen their personal and professional lives increasingly scrutinised. Government employees in Nay Pyi Taw live in apartment blocks shared with their colleagues from where they travel on shared buses to and from work every day. The opportunity to meet and talk openly with foreigners is limited. Before Hla Aung Shwe agreed to meet with me I had to contact him several times to assure him that I would come by myself and that our conversation would be anonymous and fully on his conditions When we met, Hla Aung Shwe was more relaxed and seemed to enjoy sharing stories about work and personal life. After our meeting, he said that it felt good to "talk".

I offered to buy a bottle of wine – Hla Aung Shwe told me that he preferred a foreign wine over the "crappy" Myanmar wine; he learned to appreciate good wines

when he studied abroad. Mid-career, he got a chance to complete a Master's degree abroad through the government's cooperation with a foreign university.[74]

Hla Aung Shwe was one of few fluent English speakers at his government department. He told me shyly that he did not "want to brag or anything" but that yes, his English is "better than his colleagues". Because of those English skills, Hla Aung Shwe needed to attend "all meetings with foreign delegations". He was not necessarily happy about his situation because he had little time to manage his usual work when having to "deal with foreigners all the time". Hla Aung Shwe's position as "that person" who always had to deal with foreigners and do translation work, he told me, tormented him as he did not feel well prepared for the task and it did little good for his chances of being promoted.[75]

2.8. Conclusion

A central component of my field research in Myanmar involved a strategy to locate rule of law intermediaries. In this chapter, I showed how my use of an inductive approach was key for locating individuals who played an intermediary role in Myanmar's rule of law assistance field. A central aim of the chapter was thus to answer my research

[74] According to another government employee (e-mail interview 8 May 2015) the government's foreign exchange programme is based on offers made to the government for opportunities for employees to study abroad. An offer is sent to the Ministry of Foreign Affairs (MOFA) who then sends the offer to the Foreign Economic Relations Department (FERD) under the Ministry of National Planning and Economic Development. FERD holds a co-ordination meeting to distribute the offer among ministries based on relevance. The nomination process is up to the ministries who apply a wide range of selection methods: nepotism and corruption, merit-based, seniority, technical relevance, to serve as incentives, or a combination of these methods depending on the attractiveness of the offer. If a person gets nominated, she can either accept or decline the nomination. If she accepts, she may have to sign a bond for 5-10 years to serve in the ministry after coming back. Since a foreign exchange programme primarily serves as an incentive, a relief from economic hardship, a returnee is usually sent to a hardship post and people usually resign because of this.

[75] I further analyse the way intermediaries took on a role as translators in Chapter 8.

question of who is an intermediary, while outlining my research methodology and methods.

Intermediaries would often self-identify with labels that indicated an intermediary role because I encouraged individuals to tell me about their work. I thus entered the research setting with a set of open-ended questions through which I sought the individuals who 'played a role' in the rule of law assistance field in Myanmar. The exploratory nature of my method provided a first clue in opening the 'black-box' of rule of law intermediation because it revealed who they are and how they self-identify. Qualitative interviews provided my main method of data collection with respondents that were purposively sampled. Because I sought an in-depth understanding of the daily experiences of my research participants, I also employed ethnographic research tools such as accompaniment and observation during my eight months of field research in Myanmar.

Intermediaries' self-identification also contributed to my research analysis. Often they explained their experiences by using terms or names that could be used to interpret observations. Such 'in vivo' codes included terms like 'translator,' 'fixer,' 'go-between,' 'lack of trust,' 'picked-up,' 'chased me up.' In this chapter, I illustrated how I identified in vivo codes that were later coded thematically.

This project presents the qualitative insights from 64 practitioners active in the rule of law assistance field in Myanmar. They worked for multilateral and bilateral donor agencies, the Myanmar government, international and national NGOs, as local lawyers and international consultants. However, as I suggested in this chapter, the reality was not as neat as depicted because many of my participants, especially the ones who are from Myanmar, wore multiple hats.

Rule of law intermediaries were found across several institutional positions: the local lawyer; the local NGO; the locally employed staff that work for an international organisation; the government employee; and the international consultant.

Myanmar lawyers who acted as intermediaries often had a background in politics. However, as I suggested, they were seldom elite lawyers but rather vested in underground politics and political activism. Although the actual work of a lawyer in Myanmar differs from lawyer work in other places lawyers were extensively targeted by foreign development actors as counterparts or beneficiaries of rule of law assistance, in an attempt to recreate the rule of law model's 'rationalities' (explained in detail in the next chapter) in Myanmar.

Collective intermediary activities in the rule of law field included NGOs and coalitions, often assembled as a response to increased donor presence.

'Local staff' included a mix of lawyers and non-lawyers with previous development experience. Often they related that a significant part of their work involved intermediary activities as they became 'in-between' persons, a role they were not always satisfied with.

The case was similar for government employees who often felt as if they struggled in an undesirable position that involved complex translation- and mediation activities and that did not further their career.

Some international consultants were placed within a local or national institution to provide technical expertise. Such placement meant that they were able to access spaces that would otherwise be hard to gain entry to for foreigners. I suggested that by being foreigners and positioned at a national or local institution they thus provided a channel and linking function that carried different values and understandings, from the 'international' to the 'inside.' I suggested that foreign individuals who managed to

acquire a role as rule of law intermediaries in Myanmar often had some previous connection to the country through their family history and background.

Not everyone who was employed in the roles I just presented was an intermediary but it was usually across those professional groups that I found individuals who performed an intermediary function. Thus, while positioned on different roles and assignments, what they all had in common was that they performed the delicate and intricate task of relating larger, globally oriented ideas, to the Myanmar locale, in a key middle position between foreign, national and local actors.

This chapter showed how an inter-disciplinary dialogue between law, sociology and ethnography was made possible through the study of rule of law intermediaries in Myanmar and the access I managed to gain in the field. Entering Myanmar as an 'international' researcher contributed to my study of intermediaries because it provided me with an initial understanding of the challenges foreign rule of law promoters faced as they attempted to navigate a new setting and thus became reliant on intermediaries, who in turn acquired a powerful role in the field.

However, this was not a setting like any other developing or transitional context. Transition in Myanmar needs to be read against the country's political history of isolation and authoritarian rule. Concerns that I encountered in the field revealed interesting insights into the fragile work environment the development field constituted. As I suggested in this chapter, this was shown, for example, in the perceived risk by research participants that the research could reveal insights into their positions and loyalties which in the future could have an impact on work opportunities etc. Also some research participants were reluctant to talk to me because they had been instructed by their international employers not to do so. For national actors especially, there were still sensitivities involved in speaking with foreign academics, and the potential reprimand for divulging information. In 2018 we see that development in the country is a complex

matter and more insights are needed on the relationship between local reform processes and foreign development actors and the models they promote.

In the next chapter I present my conceptualization of the rule of law as a 'travelling model' and explain why such take on the rule of law is important for our understanding of intermediary activities.

Chapter 3. Rule of Law as a Travelling Model

Development actors' efforts to solve issues of under-development have resulted in the global circulation of development 'models.' Behrends et al. suggest (2014) that these models represent certain ideas of reality that are created, and subsequently used, as apparatuses of development intervention. Models 'come objectified and combined with material technologies' and then 'travel' to new sites where they are promoted and operationalised (2014, 1-2). 'Rule of law' is one such global model, constituted by shared ideas (as defined by both theory and practice, outlined in detail below) that include aspects such as: the right to a free and fair trial, access to justice under laws that are non-discriminatory, and a government that is bound by law.

Before a model travels, it is a representation of ideas in its specific setting, where it is 'an element of an ontological, epistemic, normative or material order' (Behrends et al. 2014, 3). In this reality the model is surrounded by institutional conventions, knowledge and practices (its 'rationalities'). If 'rule of law' is examined from such perspective its rationalities would include elements found in the model's home setting, for example, institutional practices (like the appointment of judges), and epistemic communities (like a Bar Association).

However, as models travel, their 'rationalities' are left behind because they 'are immaterial and abstract and lack the robust form to be transportable' (Behrends et al. 2014, 1-2). In practice, this means that models are inseparable from the ideas of reality that created them. Therefore, they will end up looking different in their new context where institutional, cultural or economic factors will influence a model's reception. For example, when foreign rule of law assistance actors build court houses where the building itself mimics a (justice) institution (per Pritchett, Woolcock, and Andrews 2012), rather than becoming a place that provides justice and conflict resolution, they

have failed to take into account the realities of the setting into which they attempt to transport the familiar model. Another example would be a national bar association that elects its members democratically and transparently, which, in some settings, would be considered an application of the rule of law. While, in Myanmar, such rationality is difficult to translate because power dynamics that favour values other than democracy or transparency -- for example seniority --may be considered more suitable for deciding who should be a member of the national bar (Interviewee #14, 5 October 2014).

If the 'rule of law' is conceptualized as a 'travelling model' we can more easily identify the agents responsible for its local translation and appropriation and we gain insights to the processes that are required to ensure that the model gains traction in new terrain. The conceptual framework puts intermediaries at the forefront in processes that involve the reformulating of models for local application. This is a messy undertaking, because models do not travel smoothly. Rather, they are a form of intervention in an established setting that may appear 'complex' to the outside observer; for example, because they lack the institutional channels of a liberal democracy (Elwert and Bierschenk 1988). The fact that models need translation means that they need to be adapted: 'conveyed, carried, picked up, called for and interpreted' by individual or collective actors that operate as 'mediators' (Behrends et al. 2014, 2-3) or 'translators' in a 'middle' space between the global and local (Merry 2006).

An analysis of the rule of law through the travelling models framework encourages recognition of the existence of a model, the unpacking of the components of the model, and what is necessary for its traction. Such conceptualisation can be contrasted with explanations that seek a definite classification of rule of law as a

particular theory, a global 'principle of governance' (United Nations 2008) or 'international norm' (Berger 2017, Zimmermann 2017).[76]

The analogy of a 'model' does not reduce rule of law to an instrument or an 'off-the-shelf' toolkit (Peerenboom 2009) to be used in the service of theory or action agenda animated by a particular ideology – all conceptualizations that are themselves heavily critiqued (Carothers 2006b, Taylor 2009b, Upham 2006). Rather, conceiving of rule of law as a model allows us to draw on theories and insights from the fields of sociology and anthropology. In this approach, we are less concerned with the sometimes sterile debates about what the rule of law 'is' and more interested in the utility of seeing rule of law deployed as a model for development intervention, which allows us to unpack the black-boxes of its technologies and agents (as well as the ideas and ideologies that animate them), so as to better understand how it travels. Such approach can lead to the improved sociological insights into of rule of law assistance that Krygier (2009b) calls for.

In this chapter I set out to explain how 'rule of law' has been elevated to a model that is used for development promotion across the globe. I begin with a brief introduction to the concept 'rule of law' as it is commonly explained and understood. Thereafter, I provide an overview of the various 'technologies' that dictate what the rule of law is and what it can achieve in developing or fragile economy settings. In order to understand how the rule of law has been elevated into a development model we need to unpack the way technologies are constructed, supported and disseminated in the field of rule of law assistance. The example of the United Nations (UN) is telling, for example: the organisation's goal to strengthen rule of law is operationalised through, for example,

[76] In addition it questions the field of transnational regulation through the imposition of attempts to create 'global administrative law' (Kingsbury, Krisch, and Stewart 2005, Krisch and Kingsbury 2006) that often become contested in the specific setting (Wiener 2008). Halliday and Shaffer's (2014) concept of a 'transnational legal order' also shifts focus away from the assumption that international legal instruments make up authoritative legal technologies and instead makes us aware of what is required for international legal instruments to settle and align, recursively and dynamically, at transnational, national and local levels.

'judicial reform'. Accompanying sub-activities then include activities such as setting up mobile courts, ethics training for judges, and introducing computerized case management programmes for courts (Sannerholm et al. 2012). At the outset, there will be tools for measuring to what extent a country has a well-functioning judiciary to evaluate whether assistance is needed (section 3.2 United Nations 2011, United Nations Department of Peacekeeping Operations Department of Field Support 2009). The translation of judicial reform will be accompanied, for example, by technologies that include guidelines on a normative legal framework for the judiciary (e.g., United Nations Office on Drugs and Crime 2006), guiding principles for judicial conduct (e.g., United Nations 1985), and evaluation tools for judicial reform activities (e.g., United Nations Office on Drugs and Crime 2010/2011). These tools are based on modelled ideas of what a well-functioning judiciary should look like, with little consideration of local realities.

This chapter concludes that local adaptation and translation, which intermediaries engage in, is key for success in rule of law development attempts. My take on the 'rule of law' as a 'travelling model' rather than global norm or principle emphasises the 'mediated' processes needed for the model to be 'picked up' at new sites. This chapter concludes that in a setting like Myanmar where political, cultural and social norms are fluid, the implementation of the global rule of law model implies unintended consequences, if local context, authority, and power relations are overlooked. A travelling model's framework puts intermediaries at the forefront in processes that involve this reformulating of models as they travel to new settings.

3.1. Rule of Law: the Concept

To understand why and how the 'rule of law' has gained prominence as a model in the global field of development assistance merits an introduction to some of its origins. Rule of law as a concept has been broadly debated (see e.g., Kleinfeld 2005, Shklar 1998) but lacks an international, agreed consensus in the form of a binding legal instrument such as a convention. However the rule of law is something that people and organisations with different agendas agree is a good thing that is needed in order to achieve other things that they value in society, such as democracy, security, a functioning economy, and peace.

The concept's origins can be linked to a set of Western writers who are often regarded as the founding fathers of the rule of law. Accounts of anything related to rule of law often reference the writings of Aristotle, Montesquieu, Locke, Weber, Dicey and Hayek (see e.g., Santos 2006).

These writers commonly list a set of formal institutions and components needed for a state to be regarded as one where the rule of law prevails. For example, a recurrent definition of the rule of law is found in British Jurist Dicey's (1886, reprinted in 1999, 210-217) *Introduction to the Study of the Law of the Constitution* from 1886 where three components of the rule of law are described:

> It [the rule of law] means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government … equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts [, and lastly] that the general principles of the constitution … are … the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts[.]

Dicey's description is compelling because it offers legal certainty and equality under the law. His references to a common law style constitution, based on judicial decisions rather than a written document, however, requires a judicial tradition that many

countries lack. Nevertheless, this theory, centred around English institutions, gained global influence.[77]

Austrian/British economist and political philosopher Hayek (1944) defined the rule of law in *The Road to Serfdom* as prevailing when the '… government in all its actions is bound by rules fixed and announced beforehand - rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge' (1944, 75-76). Hayek also emphasized that rules should be formulated in general terms '… without reference to time and place or particular people' and apply to all cases even if unjust in certain instances (1944, 78). The definitions also suggest the necessity of an independent judiciary so that fair trials can be guaranteed, and accessible courts that have the power to review laws, government actions and decisions. Any discretion by state agencies should not be allowed to distort the law and the government too needs to follow certain standards and be bound by the law.

Hayek's and Dicey's definitions connect 'rule of law' to freedom and liberalism as an opposition to arbitrary rule.[78] The link between law and freedom has existed amongst philosophers and scholars since ancient times (see e.g., Plato, Cooper, and Hutchinson 1997). Tamanaha's (2004, 32) argument that today's theory of rule of law, which to a large extent draw on the work of Hayek and Dicey, is fundamentally liberal, is illustrated later in this chapter (see also Humphreys 2010).

The 'law' aspect of rule of law is concerned with a set of characteristics that laws should possess in order to qualify under the concept 'rule of law.' An influential account

[77] This is not surprising considering that nearly a third of the world's population live in states where the formal legal system has been influenced by common law as part of the colonial project (see e.g., Zweigert and Kötz 1998, 219) and that English has become the default language of the world. Some scholars have even tried to show a correlation between 'higher-level' rule of law where the 'legal origin' is based on common law (La Porta, Lopez-de-Silanes, and Shleifer 2008, Porta et al. 1998). Such simplified correlational explanations have been questioned (Berkowitz, Pistor, and Richard 2003, Oto-Peralías and Romero-Ávila 2014).

[78] See also, for example Locke (1689) who stated that there could be no freedom without law.

is provided by American legal philosopher Fuller (1964) in *The Morality of Law* where he argues that if a society is to be said to be governed by the rule of law, laws need to possess certain qualities: they should be publicly known and available, not retroactive or contradictory, comprehensible and fairly stable and reflect societal rules in action as well as the behaviour of the officials of the regime (see also Raz 1979).

Definitions of the rule of law have often sparked debate about whether the concept should be understood in 'thick' and 'substantive' or 'thin' and 'formal' terms. A 'substantive' or 'thick' version of the rule of law stipulates that in addition to 'formal' or 'thin' procedural elements, the content and meaning of laws and regulations should also adhere to (international) standards of law and human rights or some other substantive criteria of justice Tamanaha (2004, 91f). Such divisions permeate discourse in the field in Myanmar. For example, a foreign rule of law programme manager in Yangon (Interviewee #29, 23 October 2014) expressed irritation about the UNDP, which he said was providing rule of law trainings that were 'formal' and lacked a clear 'substantive' human rights component. The programme manager suggested that donors gave in to the will of an authoritarian regime when they provided trainings that only presented a 'thin' version of the rule of law. His comments are interesting in light of the UN's substantive definition of the rule of law, discussed later in this chapter.

3.1.1. Socio-legal Aspects of Rule of Law

An important question that springs from the definitions provided above is whether or not the rule of law can exist in a setting without formal institutions or written laws. Hayek recognized that it matters relatively little if the core of the rule of law exists in the bill of rights, the constitutional code or if it is just a strong established tradition, because the essential basis of the rule of law lies in the confidence in the concrete rules which

set up the relations between individuals (Hayek 1955). Even though it was recognized that law take the form of both written and unwritten rules about behaviour, legal scholarship has often neglected the input side of law, i.e., the forces in society that contribute to the shaping of law (Friedman 1975). For development purposes, neglecting the social 'inputs' that constitute law often contributes to a misunderstanding of law as a formal ideal that reflects a 'modern' system. The consequence of such a conception is that legal development initiatives are often expressed in terms of their form rather than as a reflection of the political and socio-economic functions that law plays in society (Decker, Sage, and Stefanova 2005, Trubek and Santos 2006, Peerenboom 2009).

Krygier (2006) reacts against universalist and formal conceptions of the rule of law and proposes that in order to understand what the rule of law is, it is necessary to look:

> beyond legal institutions to the societies in which they function there, and what else happens there which interacts with and affects the sway of law. For the rule of law to exist, still more to flourish and be secure, many things beside the law matter, and since societies differ in many ways, so will those things. So a universal, institution-based, answer to what the rule of law is, is implausible. And it will often mislead. Indeed it might well lead us away from the rule of law. (2006, 1)

Krygier's argument resonates with a travelling model's framework because it recognises that universal approaches are far-fetched. Such recognition also resonates with the law and society and anthropological scholarship that explore less formal aspects of the rule of law and sees the concept as being as much about culture and perceptions, as about formal institutions (Calavita 2010, Merry 1988).

3.2. Rule of Law's Technologies: Constructing a Model

'Technologies' support travelling models and animate ideas of what the rule of law is and what it can achieve in development settings (Behrends et al. 2014). They come from various sources but are most often created and promoted by global actors (for example the UN and the Bank) when they facilitate actions intended to promote the model from a distance, through public and private chains of service delivery (Rottenburg 2009).

One example of such facilitated action is the creation of legal instruments that are intended to regulate behaviour in settings far removed from where they were created. Other persistent technologies include fact-construction by global actors found in the authoritative rule of law discourse they create; evaluative technologies, such as rankings and performance metrics; processes of monitoring and evaluating legal institutions; and the production of research that supports the rule of law model.

In order to understand how the rule of law has been elevated into a development model we need to unpack the way technologies are constructed, supported and disseminated in the field of rule of law assistance. In this section, I review those technologies' origins, which practices and institutions legitimise them, and what consequences they have for the rule of law field.

3.2.1. Macro Actors and Argument from Authority

Powerful global organisations are at the forefront of constructing and disseminating technologies that animate the rule of law model. Following Callon and Latour (1981) we can think of such global organisations as 'macro actors' that produce technologies and place specific models at the top of hierarchies, thus making them into stable and persistently repeated 'truths' (1981, 284) through a process of copying their practices

(Meyer 1996). By representing a collective 'us' of the world, macro actors translate other actors' wills into one single will, linking indiscriminately elements from nature, culture and economy, while they become the spokesperson and spirit of that will (Callon and Latour 1981).

While there is no universal organization that carries, controls, and enforces fragments of the ideas, principles, knowledge, and technologies that the rule of law field assumes to be universally true, macro actors such as the Bank and the UN have paved the way for global rule of law assistance.[79] In line with their respective organisational focus, the Bank has been the lead actor in connecting the rule of law to economic development since the 1980s, while the UN has predominantly focused on the rule of law as a model for peace, security, and human rights.

Both the Bank and the UN have managed to construct a compelling discourse of what the rule of law is and what it can achieve in development contexts. Individually they have taken on a role as institutional advocates for the rule of law as they work towards ensuring a reasonable level of global conformity in the legal underpinnings of an array of areas. They create an environment in which global institutions formulate normative, procedural and institutional understandings of the law, which are translated into rule of law assistance on the ground in places such as Myanmar (see e.g., Friedrich Naumann Stiftung für die Freiheit). Their production of discourse has created 'argument from authority' of the kind that other actors constantly refer back to. They have thus classified and ordered a world of definitions and practices of things that are good and desirable (Latour 1987, 31). For example, the UNDP in a 2016 'What is Rule

[79] As a global international financial institution, the Bank provides financial loans to developing countries and over time has transformed itself into an influential development institution. The Bank's influence in the development field is stressed by development scholars Hjertholm and White who describe the institution as 'without a doubt the most important development institution, leading both policy dialogue and increasingly the research agenda' (Hjertholm and White 2000, 61). The UN is a multilateral organisation established in the aftermath of World War II, today focuses on a range of issues, including peace and security, sustainable development, human rights, terrorism, humanitarian and health emergencies, and governance.

of Law' flyer states that 'Without rule of law, society breaks down and peace dissolves' and asks: 'What would happen without rule of law in your country?' (United Nations Development Programme n.d.). This is a powerful claim and a daunting question that few would disagree with.

The construction of discourse is also fundamental for the way rule of law interventions are justified and licenced and the way in which the relationship between foreign donors and 'recipients' at local and national levels is established (Crush 1995, 3-4). As Crush proposes, the discourse of development creates constructs of 'the world as an unruly terrain requiring management and intervention' (ibid). After political transition in Myanmar, international actors were not slow to produce assessments based on global discourses and definitions that described the lack of rule of law and how that void required their assistance (see e.g., International Bar Association's Human Rights Institute 2012, New Perimeter, Perseus Strategies, and The Jacob Blaustein Institute for the Advancement of Human Rights 2013). Such discourse exemplifies the 'power of knowledge' through the often underlying assumption that liberal democracies in the West possess knowledge that is more advanced than that of developing settings (Rottenburg 2009, 174).

Next, I review the historical evolution of rule of law discourse within the Bank and the UN, which for both organisations has developed from separate and narrow perspectives linked to particular sub fields, settings and operational activities.[80]

[80] For example, The UN has described the Bank's (2011b) World Development Report on 'Conflict, Security and Development' as providing 'essential thinking' in the field (United Nations Development Programme 2011b, 16). The report identifies rule of law as a central concern for development, and promotes work on justice and security as the key ways to overcome cycles of conflict and to achieve development. Consequently, The UN has highlighted justice and security (seen as fundamental parts of rule of law) as essential in preventing violence. Also, expectations to deliver tangible results in implementing justice and security were raised (United Nations Development Programme 2011b, 11). Interestingly, the Bank President at the time, Robert B. Zoellick, had earlier raised the importance of supporting criminal justice areas including the police force and prison conditions in order to enhance development in post-conflict settings. However, the Bank was not able to engage in such activities, due to their political nature. Instead the Bank continued to influence and support the UN's rule of law work in post-conflict settings (Decker 2010, 235-236).

3.2.1.1. The Rule of Law According to the World Bank

As an institution that 'speaks' for law's role in economic development, the World Bank (the Bank) is recognised as a key development actor in the rule of law assistance field (see e.g., Blake 2000, 14).[81] Throughout the decades, a structure that supports the Bank's rule of law work has been developed. Today, activities that aim to enhance the performance of courts or legislative processes are carried out across several of its organizational units that are involved in designing, implementing, evaluating, or providing information about law and justice reform programmes (Justice Reform Practice Group of the World Bank's Legal Vice Presidency 2012).[82]

Although no coherent rule of law definition has been agreed for and within the Bank, one definition is found in its Worldwide Governance Indicators, where the rule of law indicator is defined as: 'the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence' (World Bank 2006). Santos in his survey finds that as many as four variations of a definition were being used simultaneously by the organisations' staff (2006).

In the early 1980's the Bank did not explicitly mention the term rule of law, however, 'legal reform' was referenced as a component of property rights, fiscal

[81] This was not always the case, because the organisation's mandate stopped at activities concerned with traditional questions of economic development. However, since the 1980's, after suggestion by the Legal Department, the organisation and its various entities have played a key role in changing the way the development field view law and judicial institutions (Faundez 2010, 180).

[82] For example, the Justice Reform Practice Group, which is part of the World Bank's Legal Vice-Presidency, generates knowledge about justice reform programming and provides advice and assistance to both the Bank staff and member countries. The Legal Vice Presidency also administers the Justice for the Poor Programme (World Bank 2011a) which has become a global spokesperson for issues that concern justice for the poor and marginalized. Another example is the Poverty Reduction and Economic Management Network (World Bank 2013) which incorporates regionally focused justice practice groups that engage in public and justice sector reform projects (Justice Reform Practice Group of the World Bank's Legal Vice Presidency 2012). In an attempt to coordinate the rule of law related work of the various the Bank groups the Law and Justice Institutions Thematic Group was created and is composed of a selection of staff with an interest in justice reform work (Justice Reform Practice Group of the World Bank's Legal Vice Presidency 2012). Also, the Fragile and Conflict-Affected Countries Group coordinates the World Bank's response to states facing situations of fragility or grappling with conflicts.

reforms, trade liberalization etc., that formed part of structural adjustment loans (Santos 2006, 267). In the late 1980's rule of law entered the organisational discourse more clearly as the organisation developed its focus on 'good governance' (Decker 2010, 228) which came as a result of the Washington Consensus (Faundez 2010, 182). In 1989, for example, it was stated that '[t]he rule of law needs to be established. In many instances this implies rehabilitation of the judicial system, independence for the judiciary, scrupulous respect for the law and human rights at every level of government' (World Bank 1989, 192). However, even though there appeared to be an increased focus on 'good governance', rule of law remained narrowly connected to contract and property rights, legal and judicial reform, and justice reform (Decker 2010, 228). The balance of the statement made in 1989 thus references what is also implied in the rule of law, as 'transparent accounting of public monies, and independent public auditors responsible to a representative legislature…' (World Bank 1989, 192).

Key individuals have been singled out as powerful in pushing for reforms within the Bank. One example is former General Counsel, Ibrahim Shihata, who has been described as 'the main architect of the 'rule of law' in the Bank and as 'a bridge between different phases and policy models pursued' (Santos 2006, 269). Shihata served as a powerful intermediary between different fields of knowledge (law on one hand and economics on the other) however, the intricacies of negotiations between such fields of knowledge resulted in a solution that suggested only a 'narrow positivistic and formalistic conception of law' stripped of ideology, politics and morality in order to please the Bank economists and country leaders (Faundez 2010, 183).

In 1999, the Bank was increasingly criticised for failing to coordinate efforts with other development actors and for failing to show enough consideration for the 'local' context in settings where development programmes were carried out (Blake 2000, 4, Faundez 2010, 188). As a consequence, the Bank President at the time, James

Wolfensohn, proposed a new 'Comprehensive Development Framework' (Wolfensohn 1999). The aim of the Framework was to consider economic development in tandem with human, social and structural aspects to better address long-term issues of development and poor cooperation between development actors (Wolfensohn 1999). Again, one individual, Amartya Sen, a Nobel Prize winner and Harvard Economics Professor, was singled out as the main architect of new ideas that related to legal aspects of development (see e.g., Perry-Kessaris 2014).[83] The Comprehensive Development Framework was inspired by a substantive version of the rule of law that drew on the ideas articulated by Sen (Santos 2006, 275).[84] In June 2000, the Bank had invited Sen to give his view on the interconnectedness of legal and judicial reform to broader development processes. Sen emphasised the need to view economic, social, political and legal development as connected means and ends, and stressed that legal and judicial reform was to be considered as contributing to, and crucial for, the general process of development (thus important on its own) and not as a separate fragment of legal or economic development (Sen 2000, 13-14).[85]

In 2012 Sen's ideas of 'justice' were still cited as an ideal. A paper that introduced a new approach to justice system strengthening for the Bank (World Bank 2012, 1) drew on Sen's ideas, suggesting that meaningful Bank work on reform of justice systems necessitated a 'vision of justice at the forefront' and thus 'an ongoing engagement with the substantive question of how justice is advanced' (World Bank

[83] We see examples of how Sen's thoughts came to inspire the Bank's later thinking and practice, for example, in a 2009 report from the Legal Vice Presidency titled 'Initiatives in Justice Reform.' Under a section titled 'the rationales of World Bank Justice Reform Activities,' Sen's discourse is repeated as the report states that 'A well-functioning legal and judicial system is critical not only as an end in itself, but also as a means of facilitating the achievement of other development objectives' (World Bank Legal Vice Presidency 2009, 2).

[84] Inspired by the Comprehensive Development Framework, the Bank gradually replaced its old paradigms with new ideas that incorporated 'the social' in the rule of law reform agenda (Rittich 2006, 203-204). The result of the new connection between governance and law was an expansion of legal reform projects that left few areas of the law out (Decker 2010, 229, Faundez 2010, 181).

[85] The search for broader Bank engagement continued as the 2011 World Development Report on 'Conflict, Security and Development' (2011b) identified rule of law, justice and security as central concerns for development and for ending cycles of conflict.

2012, 1).[86] Therefore, the 'paper sets out a justice reform agenda conceived in terms of 'actual realizations and accomplishments' that matter to users (and potential users) of the justice system, more so than 'the establishment of what are identified as the right institutions and rules" (World Bank 2012 citing Sen, The Idea of Justice, Boston, MA: Harvard University Press, 2009).

By 2017, there were some indications that the Bank was reverting to earlier thinking. For example, the 2017 World Development Report on 'Governance and the Law' encourages readers to think about the 'role' of law and 'not only about the rule of law' (World Bank 2017).

While the Bank discourse on rule of law has shifted into more substantive understandings, its discourse on the linkages between rule of law and economic development are seldom questioned and constantly repeated as one of the 'truths' of the rule of law development field. On my first visit to Myanmar I had dinner with a foreign lawyer who spent part of the evening explaining how important rule of law is for Myanmar's economic development. Similar causalities are asserted by the rule of law 'assessments' foreign actors carried out in Myanmar after political transition began (see e.g., New Perimeter, Perseus Strategies, and The Jacob Blaustein Institute for the Advancement of Human Rights 2013). The International Bar Association's Human Rights Initiative has said that '[n]ormalising the principle that the state is bound by its own laws will contribute to a climate of certainty that benefits Myanmar's population as well as its economy (2012, 7). This is a theme that is also repeated in the description of what is necessary to achieve in Myanmar: 'an enhanced respect for legal certainty could promote economic growth, because foreign investors tend to avoid arbitrary regimes in favour of those in which rights are clarified and regularly enforced' (2012, 69).

[86] The paper 'constitutes the Bank's first institution-wide approach to justice reform, and as such introduces the revised approach to justice reform to which the Bank is committed under' the updated strategy on Governance and Corruption (World Bank 2012, 1).

Similar statements were heard from key national rule of law brokers and advocates, such as current State Chancellor Aung San Suu Kyi after political transition in 2011 (World Economic Forum 1 June 2012). In relation to economic prosperity such consequential statements are interesting because the story and the reality align imperfectly. The available evidence that increased rule of law will lead to economic development is ambiguous (see e.g., Ginsburg 2000). In particular, several studies find that Asian states have managed to develop their economies without a rule of law system as described by actors such as the Bank and thus expose the fact that there might exist alternative conceptions of rule of law in the region (Jayasuriya 1999, McAlinn and Pejovic 2012, Peerenboom and Clarke 2007).

However, the Bank discourse is certainly more suitable and more palatable for settings where a less political approach, focusing on the economic gains flowing from rule of law is more readily welcomed than those that focus on the model's substantive aspects, for example, human rights (Wang 2015). The Bank discourse thus differs from the dominant focus of the UN, which I outline next, on rule of law in connection to human rights and conflict prevention. In practice, however, the organisations' different stances are seldom presented as, or perceived as being different: instead the rule of law is a concept that is everywhere and seldom questioned. Shklar's (1998, 1) suggestion that rule of law's 'ideological abuse and general over-use' has resulted in a concept that 'has become meaningless' seems relevant here.

3.2.1.2. The Rule of Law According to the United Nations

According to the UN, the rule of law is both a fundamental aim of the organisation, and a means to achieve its ends, such as peace, security, or sustainable development (United Nations Report of the UN Secretary-General 6 August, 2008). Yearly, the UN releases statements and reports on the rule of law, sometimes in relation to new topics, further broadening the concept's scope.[87] The rule of law is seen as a core concept within the UN that 'should be based on the UN Charter, international human rights law and principles of good governance' (United Nations Development Programme 2011b, 11). Consequently, the rule of law is stated as a fundamental principle of the UN's mission to provide security, foster development, protect human rights[88] and as a central component of peacebuilding (United Nations 11 June 2009).

Several of the organisation's entities work on rule of law-related issues[89] – these are represented in a vast organizational chart that itself support the model's development.[90] For the last few decades, UN rule of law policy has been formulated for

[87] For example, a 2012 UN Secretary-General report raises the importance of attending to rule of law challenges in relation to property and housing, civic records and combating corruption (United Nations Report of the Secretary-General 16 March 2012).

[88] The preamble to the 1948 Universal Declaration of Human Rights states 'it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law' (1948).

[89] For example, the Commission on Crime Prevention and Criminal Justice which, since 2002, acts as the principal policymaking body of the UN in the field of crime prevention and criminal justice (United Nations and the Rule of Law) The Commission functions as a governing body of the United Nations Office on Drugs and Crime (UNODC) (United Nations and the Rule of Law) which is a main implementer of rule of law assistance in Myanmar (the details of UNODC's work in Myanmar will be discussed more fully in Chapter 5). Also, the Human Rights Council has adopted a series of resolutions that relate to human rights and the rule of law. As a result, the Council has established several special procedure mechanisms directly related to the rule of law, for example, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the assistance of truth, justice, reparation and guarantees of non-recurrence (United Nations and the Rule of Law). In relation to Myanmar, the Special Rapporteur on the situation of human rights in Myanmar has continuously mentioned the rule of law as priority area for reform . At the programming and implementation level in conflict and post-conflict environments the Department for Peacekeeping Operations (DPKO) is the lead entity, with a thematic mandate covering the strengthening of national justice systems and institutions (United Nations Secretary-General 14 December 2006, 13).

[90] In the effort to grasp the gigantic chart of rule of law involvement and the various competing and sometimes conflicting tools and descriptions of rule of law (see e.g., Kavanagh and Jones 2011, 61) the UN has attempted to enhance cooperation between the different entities that work on rule of law (United

purposes of both crisis management and development by lead UN entities, including the UN General Assembly, the Security Council (SC), the Human Rights Council (HRC), and the Economic and Social Council (ECOSOC). The UN policy that has evolved is comprehensive, and the rule of law is included as a key element in everything from establishing law and order in conflict affected settings, to economic development and democratic governance (Farrall and Charlesworth 2016).

In particular, the UNDP has emerged as one of the UN's major rule of law implementers[91] and a key actor in the work on rule of law as a component of poverty eradication and human development (United Nations Development Programme , United Nations Development Programme).[92] For example, at the Myanmar country level, the UNDP is the lead implementer for UN's rule of law assistance under the 'Global Programme to strengthen the rule of law in crisis-affected and fragile situations' (United Nations Development Programme).[93] As 'lead agency', the UNDP coordinates planning and strategy development as well as programme implementation with all relevant (both UN and non-UN) rule of law actors in Myanmar; for example, through monthly rule of law coordination meetings in Yangon (personal observation, Yangon, May 2014).

Nations Report of the UN Secretary-General 6 August, 2008, 17). For example, through Decision 2006/47 a system of lead entities and division of labour was introduced as the organisation attempted to set up clear roles and responsibilities of rule of law assistance (United Nations Secretary-General 14 December 2006, 13-16). Consequently a Rule of Law and Resource Coordination Group was established (United Nations Development Programme 2011b, 14) that is supported by a Rule of Law Unit in the Executive Office of the Secretary-General, and the Office of Rule of Law and Security Institutions at the DPKO (Sannerholm et al. 2012, 372). More recently, the UNDP facilitates the coordination of UN rule of law efforts in crisis and conflict-affected settings through the Global Focal Point for Police, Justice and Corrections (United Nations Development Programme).

[91] Within the UNDP, rule of law, security and access to justice is managed primarily by 'The Bureau for Crisis Prevention and Recovery' and the 'Bureau for Development Policy' (United Nations Development Programme). Rule of law work is also managed by entities such as the Rule of Law, Justice and Security Unit and the Democratic Governance Group (Rule of Law, Access to Justice and Security, Legal Empowerment of the Poor Team (United Nations Development Programme 2011b, 27).

[92] A 2007 UNDP strategic plan sets out that the rule of law as 'based on justice and security' is a core component of the organisation's mandate in its work on crisis prevention, as well as recovery and democratic governance (para 84 and 102, United Nations Development Programme 16 July 2007).

[93] While, the UNDP's work on rule of law related issues traditionally were subsumed under the 'Democratic governance and peacebuilding' (previously democratic governance) pillar that focus mainly on developing contexts (United Nations Development Programme) the mandate has stretched significantly into crisis and conflict affected settings.

During the Cold War rule of law-related activity within the UN was focused on international law and its codification and expansion (Farrall 2014). In 1992, in the aftermath of the Cold War, the SC arranged its first Summit meeting at the level of heads of state. At that meeting the Secretary General mentioned the importance of rule of law for democratization at both the national and international level (United Nations Security Council 1992).[94]

In 1993 the UN General Assembly convened a World Conference on Human Rights in Vienna which resulted in the 'Vienna Declaration and Programme of Action' (United Nations Human Rights Office of the High Commissioner 25 June 1993). The Vienna Declaration considers the rule of law as imperative for a range of human, political and social rights and focuses on opportunities to assist member states in reforming national rule of law systems. The Declaration recommends that the UN establish a programme to assist individual member States in their endeavors 'of building and strengthening' national structures responsible for protecting human rights and maintaining rule of law (section 69). The Declaration further requests that such a programme be coordinated by the Centre for Human Rights and that it provides assistance 'in reforming penal and correctional establishments, education and training of lawyers, judges and security forces in human rights, and any other sphere of activity relevant to the good functioning of the rule of law' (Section 69). As a result of the Vienna conference and the Declaration, the Third Committee of the General Assembly together with the UN Human Rights Council took on the work to develop the UN's rule of law agenda (United Nations and the Rule of Law).[95]

[94] Farrall (2007) observes that after the meeting the term increased in frequency as a result of uptake by several world leaders, who stressed the concept's importance.

[95] The Third Committee adopted yearly resolutions until 2002 on rule of law to reinforce its importance for the protection of human rights (United Nations and the Rule of Law). With the UN High Commissioner for Human Rights as focal point in coordinating UN activities in relation to rule of law, democracy and human rights, rule of law was at this stage much seen as connected to human rights.

In 2000, the influential 'Brahimi Report' (United Nations) gained traction.[96] The Report emphasised a shift towards a more comprehensive focus on the rule of law that would also stretch to UN peace operations. Since then, influenced by practices developed and competencies earned in peace operations during the 1990s, a more defined policy took influence for rule of law in relation to peace building (Sannerholm et al. 2012).

The Security Council continued to hold regular thematic debates on rule of law and often stressed its importance. Especially, a 2003 thematic debate on 'Justice and the Rule of Law: the United Nations Role' resulted in a statement from the President of the SC that mandated the SG to report on the rule of law in conflict and post-conflict societies (United Nations Security Council 24 September 2003).[97] The statement laid the foundation for continued focus on the rule of law and as a consequence a 2004 report, titled 'Rule of Law and Transitional Justice in Conflict and Post-conflict Societies' launched a rule of law definition common for the whole organization (S/2004/616 23 August 2004).[98] The UN Secretary General's 2004 statement has become especially influential in defining the rule of law as:

> a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. (S/2004/616 23 August 2004)

[96] Named after Lakhdar Brahimi, Chair of the Panel on UN Peace Operations.
[97] Following the UN's increased responsibility for rule of law assistance in peace operations, and particularly after the experience as an international administrator in Kosovo and East Timor, the need grew for a comprehensive and guiding rule of law definition (Sannerholm et al. 2012, 361).
[98] Since 2004, successive reports of the SG have stressed the critical importance of rule of law, justice and security in conflict and post-conflict situations, e.g., 'Uniting Our Strengths: Enhancing United Nations Support for the Rule of Law' (United Nations Secretary-General 14 December 2006); 'Strengthening and Coordinating United Nations Rule of Law Activities' (United Nations Report of the UN Secretary-General 6 August, 2008); 'Peacebuilding in the Immediate Aftermath of Conflict' (United Nations 11 June 2009).

The institutional scope of the UN definition is broad and sets out to encompass not only legal and judicial institutions, but also law enforcement, corrections institutions and administrative agencies. This definition is ends-based and generally in accordance with how the rule of law is typically portrayed in legal doctrine and scholarly works. It includes both substantive justice (i.e., the aims and outcomes of justice) and procedural justice (i.e., the process by which those aims and outcomes are achieved). In this sense the UN definition can be interpreted as 'thick' rather than 'thin' (Tamanaha 2004, 91f) because emphasis is not only on having proper procedural guarantees, but also that the content and meaning of laws and regulations adhere to international standards of law and human rights. Nevertheless, the definition remains highly formalist as it fails to acknowledge or take into account the wide plurality of legal actors found in many of the world's hybrid systems (von Benda-Beckmann 2002, Tamanaha 2008).

At the UN World Summit in 2005 the rule of law was repeatedly mentioned as connected to international law and acknowledged, for example, as key 'for sustained economic growth, sustainable development and the eradication of poverty and hunger' and as interlinked with human rights and democracy (United Nations General Assembly 2005). The summit also led to the decision to set up a rule of law unit within the UN Secretariat (United Nations General Assembly 2005). Again the connection between 'rule of law at the national and international levels' was emphasized and the topic was added as an item on the agenda for the Sixth (Legal) Committee of the General Assembly (United Nations and the Rule of Law). Consequently, from 2006, the General Assembly debated and adopted annual resolutions on 'the rule of law at the national and international levels' and debates continued to be held on the rule of law and its connection to peace and security (United Nations and the Rule of Law).

Another major event for UN's rule of law work came as the UNDP in 2008 launched a Global Programme for Strengthening the Rule of Law in Conflict and Post-

Conflict Situations.[99] The programme is described as forming a 'blueprint for UNDP's engagement on rule of law in crisis-affected contexts' (United Nations Development Programme 2011b, 5) and as concentrating UNDP's work to assist transition from crisis to peacebuilding to development.[100]

More recently, several attempts have also been made by the Secretary-General and different UN entities to provide concrete guidance by describing specific justice components, tasks and functions in rule of law assistance. For example, the 2008 'Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance' introduces, for the first time, a framework for strengthening the rule of law by identifying a number of substantive and procedural elements in relation to aspects like constitutions and legal frameworks, and their implementation (United Nations 2008). To this end, some topical areas have gained specific attention. One example is 'legal aid' which has been the focus of global studies,[101] a major conference in Johannesburg in 2014 (United Nations Development Programme and others 2014), policy guidance (United Nations Office on Drugs and Crime and United Nations Development Programme 2014), the adoption of guidelines (United Nations 2012), and the adoption of declarations (The Johannesburg Declaration). This particular topical focus is of

[99] In 2012, building on its predecessor, UNDP launched Phase II of its Global Programme for Rule of Law, Justice and Security, under the title 'Strengthening the Rule of Law in Crisis-Affected and Fragile Situations, 2012-2015.' Especially, phase II seeks to strengthen the rule of law 'to prevent violent conflict, particularly in fragile and transitional environments' (United Nations Development Programme 2011b, 6).
[100] The UNDP describes the Global Programme as providing a global level policy 'vehicle' for the organization 'to contribute to policy debates around rule of law, justice and security with other key UN actors, and to support international consensus-building towards collective action' on rule of law (United Nations Development Programme 2011b, 14). For that objective it is suggested that rule of law programmes should be developed in over 20 conflict affected countries and territories (United Nations Development Programme 2011b, 12). Having been successful in acquiring a budget of more than USD 220 million the Programme has turned the UNDP into 'one of the largest service providers on rule of law in the United Nations (UN) system' (United Nations Development Programme 2011b, 5). The organisations reflects on its work with the Global Programme as contributing 'to build a UN-wide community of practice on rule of law, sharing experiences and lessons learned at the programme and policy levels' suggesting that the 'UNDP now plays a catalytic role in advancing a shared vision of security providers that are accountable to civilian oversight, and justice providers that are empowered to protect human rights' (United Nations Development Programme 2011b, 14). Parallel to the Global Programme initiative the UNDP runs a global rule of law programme supporting Access to Justice for Human Development.
[101] See e.g., the joint UNDP and UNODC global study on legal aid that was launched during 2015 (United Nations Development Programme and United Nations Office on Drugs and Crime 2015).

interest for Myanmar where legal aid, inspired by experiences from South Africa, became a key focus of rule of law reform efforts after political transition in 2011 (Thomson Reuters Foundation 2013).

In 2012, the UN held its first High Level Meeting on the Rule of Law in order to stress the central place that the rule of law had assumed in UN operations, and to discuss and agree on a forward looking agenda to strengthen the rule of law at national and international level (United Nations Secretary General 24 September 2012). At the meeting the General Assembly again adopted a Declaration 'on the Rule of Law at the National and International Levels' (United Nations General Assembly 19 September 2012). The scope and size of the 2012 meeting suggests that the UN views rule of law as a central aspect covering most of its activities.

We see from this overview that the UN has produced a comprehensive rule of law discourse that suggests that the concept is needed for sustainable peace and security, development, human rights, and democratic governance. The 2004 definition has gained widespread usage both as an operational and ad hoc definition by UN as well as non-UN rule of law actors active in Myanmar (see e.g., Friedrich Naumann Stiftung für die Freiheit). The 2004 definition is often cited as the alternative to the lack of a universally agreed upon definition of rule of law, primarily by rule of law promoters from the Global North (see e.g., United Nations 2011, v-vi). For example a 2013 United States Institute for Peace (USIP) report that outlines the potential for rule of law activities in Myanmar states: 'While explaining that there is a multiplicity of definition and understandings of the Concept, USIP introduced participants to the term from the perspective of the international assistance community, specifically, the definition agreed to by UN member states in 2004' (United States Institute of Peace 2013, 17). The UN definition is thus presented as representing the 'perspective of the international assistance community' (ibid).

In relation to Myanmar, the UN definition is also used in rule of law assessments to establish the benchmark of what the rule of law is -- and how little of it Myanmar embodies. For example, in a 2013 'Myanmar Rule of Law Assessment' under a section entitled 'any law reform process must begin with a common understanding of the rule of law' the definition is stated as the authoritative definition of what the rule of law is (New Perimeter, Perseus Strategies, and The Jacob Blaustein Institute for the Advancement of Human Rights 2013). In addition, foreign practitioners in Myanmar often referred to the UN rule of law definition as being an authoritative expression of the concept.[102]

As I analyse in more detail in Chapter 8, discourse by macro actors is applied and adopted in creative ways by intermediaries in Myanmar. Mainly, intermediaries find the global discourse, for example the 2004 UN definition, too encompassing and politically difficult to discuss and even more difficult to implement. Therefore, intermediaries need to adapt global discourse to local circumstances. Still, while intermediaries need to adapt the discourse to permeate reform initiatives, at the same time they often repeat and use it for 'staging' purposes to showcase an understanding of the global concept when communicating with foreign actors and attending trainings and workshops (Interviewee #3, 8 May 2014). A rule of law programme manager concurred with this: she suggested that her staff had no idea of what the rule of law meant, even while the staff themselves referred to, and repeated, the 2004 UN definition in my discussions with them (Interviewees #6, 19 May 2014; #35, 19 November 2014). What these examples suggest is that even though local actors may lack a deep understanding

[102] As do practitioners elsewhere, for example, a 2010 survey of Organization for Security and Co-operation in Europe field missions found that: 'The field operations have no recourse to a standardized, conclusive definition of the rule of law or rule-of-law promotion. A number of field operations (30 per cent) work without any definition whatsoever. The majority, however, define the rule of law or rule-of-law promotion, some with reference to Kofi Annan's 2004 report for UN rule-of-law promotion, the Copenhagen Document (1990), or the Ljubljana decision (MC.DEC/12/05), and others according to their own preferences' (Evers 2010, 9-10).

of the global rule of law model as expressed through the UN's discourse, they see it (and adaptations of it) as a necessary for career, or other motivational, purposes.

Another complexity that results from top-down formulations is that local level adaptations seldom recursively influence macro actors' discourse. As I analyse further below in this chapter, the macro actors' formulations instead remain the standard against which local level reforms are measured. It also remains static and steered towards explanations and understandings that are described as 'global' rather than 'local' (Bergling, Ederlöf, and Taylor 2009). Such practice leaves little room for alternative (i.e., non-Western) conceptions of the rule of law (Peerenboom 2004) that emerge, for example, when intermediaries translate the rule of law to the local context in Myanmar. Feedback loops thus stop at the country level, where the implementing agency (often represented by individual practitioners) may well understand the difficulties in using the organizational discourse and therefore adjust their communication with local counterparts in accordance with suggestions made by local intermediaries.

3.2.2. International Legal Instruments

International legal instruments represent a reality constructed at a 'global' level that allow for remote control and monitoring in settings disconnected from the priorities decided at that level (Rottenburg 2009). They represent a technology of the rule of law model, found in the claims of universality via instruments such as international conventions, declarations, model laws and best practices (Carruthers and Halliday 2006) that seek to replicate rule of law in different political and cultural settings. They are commonly transferred as blueprints to new sites of development (Behrends, Park, and Rottenburg 2014). For rule of law assistance purposes, workshops are delivered to lecture on the meaning and practical application of international legal instruments; they

are applied to design rule of law interventions, in attempts to amend national legislation; and they are used as benchmarks for rule of law monitoring and evaluation.

We saw earlier that macro actor discourse is often drawn from, inspired by, or reinforced and supported by international decrees, standards and declarations (international legal instruments). International legal instruments are thus a powerful technology of the rule of law model that both local and global actors use in attempts to set normative examples. We see an expression of such claims, for example, in a 2012 High Level Meeting on the rule of law, where the President of the International Court of Justice 'challenged delegates to apply the "impressive" list of instruments and conventions that comprised the normative framework for the rule of law' (Meetings Coverage: United Nations General Assembly 24 September 2012).

International legal instruments are used as technologies of rule of law in transitional settings when they are applied as frameworks in the design of rule of law interventions. For example, the United Nations Basic Principles on the Independence of the Judiciary (1985), Basic Principles on the Role of Lawyers (1990a) and Guidelines on the Role of Prosecutors (1990b) help guide judicial reform as a component of rule of law assistance (see e.g., United Nations Office on Drugs and Crime 2017).

In Myanmar, where the government historically has paid little regard to international law (Milbrandt 2012) and has ratified relatively few international treaties (United Nations Human Rights Office of the High Commissioner 2017), INGOs as well as local NGOs use international law to advocate for change and to promote awareness of human rights. Already in the early 1990s, the International Labour Organisation (ILO) engaged in Myanmar in an attempt to end forced labour by (Horsey 2011). One of the strategies employed was to draw on the regulatory power of international standards to put pressure on the military leadership (Horsey 2011) who, despite their oppressive behaviour, also sought some political legitimacy (Cheesman

2013, 344). In 2004 local NGO Equality Myanmar created a Universal Declaration of Human Rights cartoon (Equality Myanmar 2004) that has since been used to advocate for human rights in the country (personal observation in Yangon during field work in 2014). Through visual aids the cartoon illustrates, for example, article 7[103] and article 10[104] of the Universal Declaration in ways that communicate the articles' main message of legal equality and the right to a fair trial:

(Article 7 UDHR, image by Equality Myanmar)

(Article 10 UDHR, image by Equality Myanmar)

[103] 'Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination' (1948).
[104] 'Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him' (1948).

International legal instruments are also applied in attempts to amend national legislation. The UNDP, for example, writes that a central component of its work on access to justice 'is to translate international normative frameworks into domestic legislation and practice' (United Nations Development Programme n.d.). The International Commission of Jurists uses international legal instruments as an assessment framework for the analysis of what is wrong with the law in Myanmar in order to advocate for a change of legislation (see e.g., International Commission of Jurists 2013). Fortify Rights draws on international standards to advocate for the abolition of legislation that require individuals residing in Myanmar to report (and obtain permission to host) overnight guests to government officials (Fortify Rights 2015).[105]

International courts may explicitly seek to bind parties before them (including states) through the use of international legal instruments. As an example, Myanmar has yet to sign (and become a Party to) the Rome Statute of the International Criminal Court (ICC) in order for the Court to be able to investigate and prosecute alleged war crimes committed by members of the Myanmar Army. Still, many of my research participants who were foreign rule of law practitioners referred to such investigations as the ultimate expression of rule of law being applicable in Myanmar. Respondents who were Myanmar nationals expressed neither a desire nor expectation that 'the Generals'

[105] Such regulation is based on the colonial 'Village Act' which stipulated a system of collective penalties for resistance or reluctance to report criminals, deportation of friends and family of suspected criminals, and the requirement of villages to keep fences and report any activities of strangers (Furnivall 1948). Originally, passed during the pacification campaign (1886-90) 'as an instrument of martial law', Callahan, suggests that '[t]he Act broke up traditional local-level administrative organizations' seen as 'giving rise to banditry and organized resistance to British rule' but counterproductively 'paved the way for a longer-term trend of lawlessness and disorder' (Callahan 2004, 23-24).Compliance with the relevant sections that regulate the obligation to report overnight guests in the current 'Ward and Village Tract Administration Law' is ensured through household inspections that are often carried out at night. Fortify Rights finds that such legislation is repressive as it 'impinge on various human rights, including the right to privacy and rights to freedom of movement, residency and association' (Fortify Rights 2015, 7). In March 2016 the Myanmar Times reported that the National League for Democracy (NLD) was about to suggest changes to the regulation which they suggested threw negative light on the country even though such draft amendment would likely lead to a conflict with the military which oversees the compliance of the 'Ward and Village Tract Administration Law' (Pyae Thet Phyo 2016).

would ever be subject of the rule of law and such investigation. One foreign lawyer expressed the problem as she perceived it:

> People get very offensive if you mention the ICC, people are less interested in it, they think it would provoke the military. It is better to stay away from it. Some think it could happen in 5-10 years. This differs from other countries where there is some government interest in transitional justice. This also raises the question if we should do things here when the government is not interested? Or is what we are doing here actually the way we should do transitional justice in other places? I am starting to raise the issue. (Interviewee #15, 22 September 2014)

Foreign organisations in Myanmar nevertheless provided trainings and workshops on 'truth seeking' and 'transitional justice' (The Institute for Political and Civic Engagement (IPACE) and The International Center of Justice (ICTJ) 2014).

Trainings and workshops are delivered to lecture on the meaning and practical application of international legal instruments. For example, a 2013 Myanmar Legal Aid Network (MLAW) workshop on 'Legal Aid and Rule of Law' (workshop invitation on file with the author) sought 'To tackle the issues of independence of the Judiciary, independence of the Bar Council, the need of the National Bar/Lawyer Association, ethics of legal professionals, and legal aid/access to justice which are important aspects to enforce rule of law in Myanmar' stated as guarantees, not only under Myanmar's 2008 Constitution, but also under the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights, the latter which Myanmar still has to ratify (Centre for Civil and Political Rights 2016).

3.2.3. Rule of Law Indicators

In order to justify the need for rule of law reform and evaluate reform attempts, macro actors have developed means of measuring and evaluating the uptake of rule of law by target states. 'Indicators' that 'measure' and 'rank' rule of law macro actors also seek to entrench their professed discourse and concepts.

The use of indicators as a technology for global governance by international development actors has been extensively analysed (Davis, Kingsbury, and Merry 2012). They have been referred to as 'technologies of truth' (Merry and Coutin 2014) referring to their power in defining the truths of social realities and knowledge (see also Rottenburg et al. 2015).

Several indicators have emerged to specifically measure, monitor and evaluate rule of law (see e.g., Taylor 2016, Merry, Davis, and Kingsbury 2015). Parsons et al. in 2010 identified a total of 53 justice indicators (Parsons et al. 2010). Some of the most well-known examples include the World Justice Project *Rule of Law Index* (World Justice Project 2014); the World Bank's *The Worldwide Governance Indicators* (World Bank 2017); and the UN *Rule of Law Indicators* (United Nations 2011).[106]

Indicators are powerful technologies of the rule of law as they are commonly used to bench-mark and evaluate national justice systems. For example, in a 2016 'Briefing on the Rule of Law in Myanmar' Booth writes that:

> Myanmar continues to earn dramatically low marks in global rule of law and governance indicators. In 2015, The World Justice Project placed Myanmar at 92 out of 102 countries ranked due to poor ratings in open government, absence of judicial corruption, and fundamental rights. The same year, the World Bank gave Myanmar one of the lowest scores possible in rule of law, along with meagre rankings in other public sector governance issues. (Booth 2016, 1)

Through such a statement, the author presents indicators as authoritative and, in Rajah's (2014, 356) words, 'impenetrable,' meaning that they are presented in a format that few care to question.

Indicators are frequently built into project designs as part of the required outcomes for an intervention (Taylor 2016). They are applied as quantifiable benchmarks intended to 'prove' whether or not rule of law development aid 'works' and

[106] The UN indicators focus primarily on the criminal justice sector, contradictory to the organisations attempts to advocate for a broad understanding of the rule of law see (United Nations 2011). Also, the UNDP recently developed a comprehensive user's guide to measuring rule of law, justice and security programs in development settings (Kutateladze and Parsons 2014).

'measure host legal system compliance with selected forms of the rule of law' in attempts to standardise rule of law assistance (Taylor 2016). This line of though can also be seen in the development of impact evaluations and other ways of measuring rule of law assistance (Cohen et al. 2011).

In their design, rule of law indicators tend to be top-down, ahistorical snapshots of how select respondents perceive the functioning of formal legal institutions (Ginsburg 2011, Taylor 2007). They are also intended to broadly generalize and influence perceptions of rule of law within individual states, measured against an idealized yardstick of what desired 'rule of law' attributes or institutions would look like. Taylor (2007), for example, argues that rule of law indicators support simplified representations over complex realities that are 'more easily digested and manipulated within a globalized template' (Taylor 2016) and that they are commercial products supported by various forms of branding that may also help global organisations build their 'profile in the rule-of-law industry' (Taylor 2016).

Recently the importance of rule of law indicators was highlighted in relation to the 2015 Agenda on Sustainable Development Goals (Arajärvi 2017, Bergling and Jin 2015). In the planning stages, it was suggested that '[d]efining and measuring goals, targets and indicators on justice and rule of law is both technically feasible and a key component in ensuring that the post-2015 agenda is equitable and inclusive' (The Permanent Mission of Pakistan and the United Nations system through the Rule of Law Coordination and Resource Group (RoLCRG1) 2014, 2). However, in 2017, we see that the optimism, especially, in relation to Goal 16's (Peace, Justice and Strong Institutions) 'measurability' was increasingly recognized as presenting challenges. A concrete example of the increased complexity of these indicators would be the challenge of measuring the 12 targets that accompany Goal 16: for example, 'Promote the rule of law at the national and international levels and ensure equal access to justice for all' (The Global

Goals for Sustainable Development n.d.). Countries are expected to provide annual reports on their progress in achieving the targets which feed in to a report by the UN Secretary General (United Nations: Economic and Social Council 2017). Generating statistical data be difficult for national governments and there are likely to exist profound political disagreements over concepts that are the target of measurement: for example war, peace institutional autonomy, and justice (Tommasoli 2017). To engage with some of the complexities of applying official indicators, a specific SDG 16 Data Initiative has been created that supplements the officially agreed indicators with indicators that try to capture citizen perceptions, based on surveys or expert assessments (SDG 16 Data Initiative).

Rule of law ranking and measuring tools have become a powerful technology for the way rule of law is perceived for purposes of development interventions around the globe. Increasingly, they are becoming more complex. More investigation into their structure would reveal multiple layers of complexities that prompt questions about the nature of constructing indicators (Davis, Kingsbury, and Merry 2012, Merry, Davis, and Kingsbury 2015, Parsons et al. 2010, Restrepo Amariles 2015, Rottenburg et al. 2015). An analysis of 'commensuration,' defined by Merry (2015) as the process of translating diverse social conditions and phenomena into comparable units is important when increasing weight is being attached to indicators, because indicators decontextualise people, events, actions and objects to create points of comparison and similarity. Indicators contribute to the construction of a rule of law model that is more often formal and limited to certain areas of rule of law programming, rather than considering local complexities and power dynamics and we know little about the actors that work on the translation of indicators at national and local levels.

3.2.4. Rule of Law Research and Theory

Science as a technology has authority and influence in the field of rule of law assistance, yet little attention has been devoted to the way research and theory influences and informs the way rule of law is considered when applied as a model. For example, what ideas and perspectives become accepted as the 'truths' of the rule of law model? How do global rule of law actors make use of rule of law research and theory to support their claims and authoritative discourse? The field of rule of law assistance is populated by researchers and institutions that carry ideas and knowledge for rule of law expansion, change and evaluation. Organisational theorist Meyer (1996, 247) suggests that through research, institutes and bodies, organisations and others 'search externally for consensual and scientifically 'valid' standards' and that involved consultants and scientists often serve what is considered a higher set of truths and not simply a market of consumers. Callon's (1986) foundational study of the declining scallop population in St Brieuc Bay exemplifies how a group of scientists became the central translators of the 'will' of several groups, while establishing themselves as spokespersons. Recently, the role of experts as spokespersons is stressed in relation to the 2015 Sustainable Development Agenda. For example, the UN Secretary General has appointed 'scientists' to work on a quadrennial Global Sustainable Development Report (GSDR) that is intended to 'strengthen the science-policy interface,' claims to incorporate 'evidence in a multidisciplinary manner,' and 'provide guidance on the state of global sustainable development from a scientific perspective' (Risse 2017, Sustainable Development Knowledge Platform (United Nations) 2017). Such stressed importance on scientists' knowledge empowers certain actors as they obtain 'power' to represent 'the rest' while they manoeuvre the 'authority to speak or act on behalf of another actor or force' (Callon and Latour 1981, 279).

From the earliest days of the 'law and development movement' (discussed in Chapter 1) academics have been involved in its establishment and characterisation (Trubek 2006, Newton 2006) and their work has been used to justify activities by illustrating that they have an 'impact' (see e.g., Legal Vice Presidency 2003). In particular, rule of law research has come to focus on defining and conceptualising what the rule of law 'is.' One of the conventions of the scholarship, as I outlined above, has been to list certain public goods that are needed in order for a state to be regarded as one where the rule of law prevails, and some scholars have been deemed to be 'inventors' of rule of law theory. As a result, in attempts to provide conceptual clarity and define what the rule of law is, subsequent scholars will usually start from an account of an historical truth originating with theorists such as Weber, Dicey and Hayek (see e.g., Santos 2006). Although undoubtedly these theorists have had significant influence on rule of law thought in Western thinking we cannot be certain that they play a significant role for development practitioners today, who, by contrast, cite the UN as the 'inventor' of rule of law. Still, scholars, more so than practitioners, reinstate the work of this selected group of legal and political theorists and often express surprise that development practice looks so very different from what these theorists once described (see e.g., Humphreys 2010, Santos 2006). Rule of law theorists also support a tradition of analysing countries through these technologies and benchmarks as a way of determining whether or not they 'have the rule of law' (see e.g., Cheesman 2009).

Moreover, by reinforcing the importance and supremacy of these theorists, researchers are feeding a set of technologies into the rule of law, leaving out both alternative explanations of the rule of law as well as the theoretical work by scholars from non-Western countries, thus concentrating knowledge in an elite part of the world (Said 2003). Interestingly, in Myanmar, in addition to the influence of newly- arrived foreign organisations and researchers, local practitioners often refer to Western theory

when asked how they inform themselves about rule of law. This contrasts with the responses of foreign practitioners, who more often refer to international legal instruments and discourses. So, for example, when I asked one of Aung San Suu Kyi's advisers about her knowledge of rule of law, the reply I got was that "She read Tom Bingham's book on rule of law" (Bingham 2011) (Interviewee #41, 11 December 2014). A former political prisoner and now local rule of law activist said that for purposes of his own knowledge development and curricula development for trainings; "I read a lot of books by western scholars, for example Hart, I slightly use parts of these" (e.g., Hart 2012, Interviewee #30, 24 October 2014). A rule of law programme staff member suggested that he read many political works, and translated the texts by Thomas Jefferson to learn about the rule of law: "I translated the text, it means absolute objectivity in the application of law, people representing people" (Interviewee #55, 27 September 2015). This is interesting because again it indicates that globally circulating discourses that contribute to the construction of the rule of law model may be too encompassing and confusing for adaptation at local and national levels. Instead, local actors resort to older theoretical work void of development trends and buzz-words.

On a more practical level, some researchers are engaged in justifying involvement in rule of law assistance and creating a feeling of assurance through validated science and research. Faundez (2010, 180) for example, suggests that the World Bank has 'made a serious effort to offer intellectual justification for its involvement in legal reform' through the 'voluminous literature' they have produced. Also, Thomas (2005) suggests that the Bank has continuously attempted to prove empirical relationships between rule of law and economic growth through quantitative research. To that end, the organisation established and managed a trust fund with support from donor countries such as Australia to support research and operational innovation through the 'Justice for the Poor Programme'(Justice Reform Practice

Group of the World Bank's Legal Vice Presidency 2012). Until its phased conclusion in 2018-19, the programme offered a 'Justice and Development Working Paper Series,' briefing notes, research reports, policy notes and literature reviews on rule of law and justice related topics (World Bank 2011a). The Bank has also at several occasions sought statistical validation and quality assurance of its influential WJP *Rule of Law Index* through an opinion piece from a group of European scientists (Michaela and Saltelli 2012). The Bank's web portal on 'Justice and Rule of Law' (World Bank 2015) informs us that the Bank also carries out extensive research through case studies and working papers. For example, for purposes of judicial reform, a 2013 paper from the Justice and Development Working Paper Series on 'Caseflow Management: Key Principles and the Systems to Support Them,' by Gramckow and Nussenblatt, provides a comprehensive introduction to 'caseflow management' as a tool for 'courts across the globe … to better organize and manage their caseload' (Heike Gramckow P. and Nussenblatt Valerie 2013, 1). The call for caseflow management through a research piece is interesting because 26 percent of the Bank's total spending on technical assistance for justice reform was at the time devoted to court and case management (Justice Reform Practice Group of the World Bank's Legal Vice Presidency 2012, 4). Other development actors also focus on case management systems as components of judicial reform, for example, in Myanmar Tetra Tech was introducing such systems in local courts at the outskirts of Yangon (Interviewee #59, 15 December 2014).

3.3. Conclusion

A development model that is constituted by shared ideas about rule of law circulates globally. In this chapter, I showed how and why it might be analytically fruitful to think

about 'the rule of law' in terms of a 'travelling model' rather than a global or universal norm.

The rule of law model's 'technologies' are created and promoted by powerful global actors that facilitate actions intended to promote the model from a distance. In this chapter, I suggested that macro organisations are formulating a global rule of law agenda through their discourse and authoritative arguments about what the rule of law is, and what it can help achieve in developing or fragile settings. This chapter suggested that local level adaptation seldom recursively influences the discourse of macro actors, but instead the latter remains the benchmark against which local level reforms are measured. Instead, local actors may find it necessary to adopt (and adapt to) global discourse for strategic or career purposes. Such practice leaves little room for alternative conceptions of the rule of law to emerge or be publically articulated, for example, when intermediaries translate the rule of law to the local context in Myanmar. The discourse used by macro actors thus remains static and steered towards explanations and understandings that are described as 'global' rather than 'local.'

International legal instruments constitute one technology through which translation happens. They are used to advocate for change and promote awareness of human rights and applied in attempts to amend national legislation.

Another technology was found in the various 'indicators' that 'measure' and 'rank' rule of law to entrench professed rule of law discourse and concepts. Significantly, rule of law indicators contribute to the construction of a rule of law model that is more often formal and limited to certain areas of rule of law programming rather than considering local complexities and power dynamics.

Research in various forms is used to justify involvement in rule of law assistance and to create a feeling of assurance through validated science. In particular, rule of law research has come to focus on defining and conceptualising what the rule of law 'is' and

Western scholars have been deemed the 'inventors' of rule of law theory. Science as a technology has authority and influence in the field of rule of law assistance and that yet little attention has been devoted to the way rule of law research and theory influences and informs the way rule of law is considered when applied as a model for intervention. For example, little work has been done to track the practices that 'create giants' (Calkins and Rottenburg 2014) through citation practices in the rule of law field while ignoring other authors. By reinforcing the importance and supremacy of these theorists, researchers are feeding a set of technologies into the rule of law, leaving out both alternative explanations of the rule of law as well as the theoretical work by scholars from non-Western countries. In Myanmar, local practitioners often refer to Western theory when asked how they inform themselves about rule of law. This contrasts with the use that foreign practitioners make of international legal instruments and discourses. This is interesting because it, again, indicates that globally circulating discourses that contribute to the construction of the rule of law model may be too encompassing and confusing for adaptation at local and national levels.

Local adaptation and translation, which intermediaries engage in, is key for success in rule of law development attempts. My take on the 'rule of law' as a 'travelling model' rather than global norm or principle emphasises the 'mediated' processes needed for the model to be 'picked up' at new sites. This chapter suggested that in a setting like Myanmar's where political, cultural and social norms are fluid, the implementation of the global rule of law model implies unintended consequences, if local context, authority, and power relations are overlooked.

In later chapters, I show how the rule of law model informs rule of law assistance work on the ground in Myanmar: for example, through the way global definitions and discourse is used to design interventions and activities. In the next chapter, I turn to a detailed introduction of how intermediaries accumulated capital

during military rule in Myanmar and show how intermediaries capitalised on that capital to facilitate the translation of the rule of law model after political transition.

Chapter 4. How Intermediaries Built Social Capital during Military Rule

Becoming an effective intermediary requires resources. Following Myanmar's political transition, intermediaries needed social capital of the kind envisaged by Bourdieu (1986) – resources linked to a sustainable network. Equally important was their access to foreign capital which – following Dezalay and Garth (2002) – is made up of contacts, knowledge, and education accessed through foreign actors. In many cases, however, they had begun to accumulate both forms of capital during the period of military rule and this became key for their positioning as actors 'in-between' development counterparts when the field of rule of law assistance opened up following political transition. Consistent with anthropological theories about brokers and intermediaries, such connections to 'internal' and 'external' spaces of knowledge is a prerequisite for carrying out an intermediary function (Gonzalez 1972, Mendras and Mihailescu 1982).

Intermediaries' engagements in local level politics formed the basis for their accumulation of their networks and thus their social capital. Those networks, which were linked to political activities, contributed to some individuals being identified as 'reform-minded' so that they eventually caught the attention of foreign actors who supported them with contacts, knowledge, education and other forms of foreign capital. Donors thus applied 'international strategies' (Dezalay and Madsen 2012, 439) to instill local change through individuals who strategically used their social capital as a means to attain other purposeful goals (Lin 2001).

Ma Thida Aye is one such person. She had recently returned from studying a Master's degree in international relations and human rights in the U.S. She was excited to tell me about her diverse background and the different places her engagements had taken her in life. Not long before we met, Ma Thida Aye had been offered a place on an

exposure trip abroad arranged by a foreign rule of law donor to learn from other transitional settings. She told me that this opportunity led to her starting her own legal aid NGO.

"Having the voluntary spirit" had always been Ma Thida Aye's key motivation in life, she recounted with a smile. As a junior lawyer, she spent most of her time defending farmers in her local village in Myanmar's western Rakhine state. She laughed as she remembered how she would upset local officials when she offered poor farmers her legal services free of charge. Already as a university student, Ma Thida Aye was politically engaged in student politics and supported the National League for Democracy (NLD).

Because of her political affiliations, she had the chance to study English at the American Centre in Yangon during the years of military rule. The English classes, however, involved "a lot more than English" and after a while Ma Thida Aye also joined a political book club. It was through her engagements with that foreign institutional presence in Myanmar that she was later able to study abroad through a scholarship. Ma Thida Aye made a lot of friends through her political engagements and English studies. She told me that the people she met at the American Centre worked "all over the place" for different foreign development organisations.

In addition to running her own legal aid NGO, Ma Thida Aye also works for a foreign organisation that supported judicial reform and legal aid development. She explained that she was well suited to work with a foreign organisation because she had been in America for a long time, which, according to her, meant that she knew "how to deal with their nature … I don't have a problem to deal with *them* [foreigners]". Ma Thida Aye also explained how she capitalised on her exposure to international concepts of law and justice because: "From what I learnt abroad, I can bring knowledge back home, like a bridge".

The story of Ma Thida Aye illustrates the characteristic background of rule of law intermediaries who are from Myanmar and who work for foreign organisations as local staff or lawyer consultants.[107] They reveal similar characteristics in relation to their social trajectories and the way they accumulated various forms of capital during military rule. Ma Thida Aye's personal history is one example of how the exposure to external ideas, manners and ways of living etc. (Lewis and Mosse 2006, Gonzalez 1972) facilitated her ability to carry out an intermediary function between foreign and local actors. Her story shows how intermediaries were able to capitalize on foreign capital accumulated from connections to 'global' actors to further build 'power at home' (Dezalay and Garth 2002, 7-8, Hammerslev 2006).

I focus on intermediaries who reveal similar backgrounds in detail in this chapter because my search for intermediaries (see Chapter 2) revealed that previous foreign exposure was common to 19 of the 26 intermediaries I interviewed. Their backgrounds tell an interesting story about how foreign and social capital was accumulated during military rule in a country often described as having been 'completely isolated' from foreign ideas and connections (see e.g., Turku 2009). Intermediaries' social trajectories also provide important insights into the emergence of the rule of law assistance field in Myanmar after transition began in 2011. By examining the social trajectories of rule of law intermediaries, we can observe how certain practices of rule of law assistance 'emerged on the basis [of their] common capital and ideas' (Dezalay and Madsen 2012, 448-449).

The data presented in this chapter consists of interview responses from foreign and local respondents and my own personal observations from field work in Myanmar during eight months in 2014. The chapter answers a set of central questions that concern intermediaries' backgrounds, profiles, networks and their self-perceptions.

[107] See Appendix A for a full overview of categories of research participants.

Intermediaries' backgrounds are important for understanding who they respond to, as well as what their own strategies and interests are (Dezalay and Garth 2002). These are factors that arguably will influence their actions and decisions, negotiations and interactions (Halliday and Carruthers 2009) and the way they translate the rule of law model in Myanmar.

I start with an overview of rule of law intermediaries' social capital, as interlinked with their political engagements and personal motivations. Then, I illustrate how intermediaries accumulated foreign capital during a time in Myanmar's history that posed many challenges for reform-minded and politically-engaged individuals. I analyse how intermediaries' social and foreign capital were reinforced as they became engaged in the rule of law assistance field.

This chapter concludes that while rule of law intermediaries' access to international capital helped 'amplify' their work on rights-related issues at home, the use of foreign capital was not solely to intermediaries' benefit: existing distrust of foreign interests affected the value of their capital. This ambivalence led intermediaries to apply different strategies to hide their connections to foreign actors. Still, they needed to be in a position where they could use their networked resources to channel aid money or development activities to local levels, in order to gain political influence.

4.1. Rule of Law Intermediaries' Social Capital

Social capital includes resources that are accessed through connections to a network of other actors (Lin 2001). The most central component of rule of law intermediaries' social capital is their links to a sustainable network (Bourdieu 1986) within which they are experts, have time to foster, and are willing to use for personal profit (Boissevain 1974, see also Seeley 1985, Gonzalez 1972). Resources in the network are often

'acquired,' for example, through intermediaries' educational efforts, rather than 'ascribed' (Lin 2001) because intermediaries are not born to beneficial positions as 'elites' in Myanmar society.

Rule of law intermediaries' networks could be observed in different ways. For example, a comment from a foreign programme manager was suggestive of how intermediaries were interlinked: "They know each other from back in the dark days … Some people we lost track of; the others are all over the place" (Interviewee #20, 30 September 2014). The programme manager was referring to the fact that intermediaries knew each other from the political activities that they were engaged in when Myanmar was under military rule, commencing when General Ne Win took power in 1962 (Turnell 2011), and continued as the State Law and Order Restoration Council (SLORC) took power in 1988 (Guilloux 2010). It officially ended in 2011, when a civilian government was sworn in.

Intermediaries were frequently described in relation to their networks. For example, one foreign programme manager suggested that his local staff was an invaluable resource because "She knows everybody in the country" (Interviewee #25, 3 October 2014). A foreign lawyer expressed his gratitude about working with a specific intermediary: "He is a great guy – he has all the connections" (Interviewee #29, 23 October 2014). The genuine nature of intermediaries' access to networks are likely difficult for foreign actors to assess, however, as Lin (2001) suggests, it might suffice to let others know about one's network in order to further build one's influence. My own observation from attending workshops and conferences and my meetings with intermediaries in the field confirmed that many interviewees were connected to each other in some way. Often, those connections dated from shared activities during the period of military rule. I review such activities in detail below.

4.1.1. Intermediaries' Political Engagements

Intermediaries in Myanmar have a history of social and political engagement. Consistent with the findings pertaining to intermediaries by political anthropology scholars (Paine 1971, Cohen and Comaroff 1976) such involvement is characterised by a sense of modesty because the intermediary role requires the showcasing of being an 'insider', at the same social level as the constituency, and a genuine will to help people without personal interest, while reluctantly donning the 'mantle of leadership' in recognition of public political duty (Paine 1971). For example, instead of stating that political office was his main objective, one intermediary and local lawyer commented that he would "go [into public office] if they [the NLD and Aung San Suu Kyi] called for him" (Interviewee #17, 23 Sep 2014). The same intermediary confessed that being an insider was sometimes a constraining part of his political work, for example, because in his local area he had to blend in by wearing traditional clothing (*lunghi*) while in Yangon he was able to wear "more Western clothes" which he preferred.

Intermediaries' political and social engagements included the provision of legal defence for farmers -- as in Ma Thida Aye's example, above – an activity that in Myanmar comes with some risk (Cheesman and Kyaw Min San 2014). They also included human rights advocacy and documentation of human right's violations, involvement in student politics,[108] and engagement as (primarily) National League for Democracy (NLD) party members.[109]

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[108] Student activism has a long history in Burmese politics, dating to the colonial period, and has often been crushed by disproportionate violence by the government. For example, in 1962, when student protests against the revolutionary Council's closing of independent political organisations occurred, the response included the detonation of a bomb to blow up the student union building as well as shootings (resulting in several casualties) (Steinberg 2001).

[109] The NLD was assembled in the aftermath of the 1988 student uprisings (Turnell 2011). Aung San Suu Kyi, daughter of General Aung San who was assassinated just after Burma gained independence, became a key leader and symbol for the democracy movement. Together with two former military officials, Aung Gyi and Tin Oo, she set up the Party to work for democracy and a rightfully elected government (Lintner 1989, 193-194). The NLD was allowed to tour the country for some time, where they were warmly

At the time of military rule such activities constituted risky undertakings. Political opposition (including any sort of politically deemed work) had been declared illegal by the 1964 Law to Protect National Solidarity because forces rivalling the state were targeted for removal (Taylor 2009a).[110] In the worst cases, political activities led to prison sentences, for example, for spreading flyers and other written material at the University (Interviewee #14, 13 May 2014). Under SLORC's rule, opposition politicians were often charged with criminal offences under the 1950 Emergency Provisions Act that, for example, criminalised the spread of false news and the disrupting of morality or security, or under section 122-1 of the Penal Code, which was the British drafted India Act from 1860, that criminalised high treason, and had the effect of nullifying opposition politicians' elected status (Diller 1997, 33).

Intermediaries perceived that they had managed to obtain influence at the time of transition because of their previous political engagements. For example, intermediaries described how actors at local levels knew them from those earlier engagements which facilitated the activities they later carried out while working on rule of law assistance. One local lawyer, for example, suggested that people across Myanmar knew him at the time because earlier he had been able to travel around the country to document human rights violations (Interviewee #14, 13 December 2014).[111] In Myanmar, he explained to me with a big smile, knowing means trusting: "That's also

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greeted by their supporters. Such freedom was however soon hindered as the military initiated attempts to prevent them from doing so by warning party members that they should not incite the people but follow laws, regulations, rules and orders (1989). As Aung San Suu Kyi increasingly criticised the military, tension rose and in 1989 she was put under house arrest until 1995 and banned from running in the coming 1990 elections (Pedersen 2008, 129).

110 '[P]olitical and social forces' were targeted also during colonial rule, as they were classified as criminal under the mantra of internal security (Callahan 2004, 22).

111 One organisation that carried out such activities was ND-Burma, a network that facilitates collaboration between organizations to document human rights violations (nd-Burma).

why all the internationals come to see me", -- because of his trusted connections at local levels.[112]

An effect of their social and political work was that intermediaries could access local areas more easily to promote rule of law reform. For example, a local lawyer who was a member of the NLD, and had been so during military rule, suggested that because he had travelled extensively during his political engagements it was easy for him to locate lawyers across the country: "Today, in every state I just call the local NLD office; often there is someone there that I know and then I can get to the other people" (Interviewee #14, 5 October 2014). Another intermediary believed that her country-wide travels had taught her how to recognise different cultural traits among Myanmar's' many ethnic groups, thus providing her with a cultural understanding that foreigners lacked (Interviewee #10, 12 May 2014).[113]

Intermediaries' ability to travel matters because foreigners experience difficulty moving freely (due to both psychological and physical reasons) and some local areas remained classified as restricted for foreigners (Myanmar Ministry of Hotels and Tourism). Some foreigners fear being 'exposed' if they leave Yangon's urban disguise, or recognize that they lack the cultural and linguistic understanding to comprehend the social and political dynamics of rural areas. A foreign lawyer and INGO programme manager reflected on these difficulties: "I am a foreigner so there are a lot of places where I can't go. Rural areas are very hard - you don't know what's going on … glad we did not go in" (Interviewee #3, 8 May 2014).

Intermediaries reflected on how their political engagements had influenced their personalities. For example, I learnt that Aung Thura Ko, a Myanmar lawyer, whose

[112] In Chapter 7 I explore how intermediaries take on a role as 'trust builders' , because trust is another central component of social capital (Fukuyama 2000), that matters for counterparts in the rule of law assistance field.
[113] A central aspect of the intermediary role is indeed that of the 'cultural broker' (Geertz 1960).

confidence is a striking feature, had previously been in trouble with the authorities for his political involvements. However, he told me, he had always responded to the government's involvement with a fearless and progressive approach. According to Aung Thura Ko, this also influenced the work he was involved in with foreign rule of law actors after political transition. For example, after the Military Intelligence (MI) showed up at one of the rule of law trainings I was observing, he exclaimed that he was not afraid to talk to them, nor to the police, nor to the military: "We don't see any barriers" (Interviewee #17, 23 September 2014).[114] This fearlessness was common to many of my other interviewees – they were not only likable, but, in many cases, also brave and seemingly confident about taking on battles others would not.[115]

Intermediaries' political activities also meant that they shared a 'sentiment' (Homans 1950) as they had gathered around 'activity' (ibid) during military rule. Homans (1950) explains patterns such as when actors get together because of a common 'emotion' which further strengthens their network ties to each other. In Myanmar, that common emotion was, for example, explained as one of a shared 'voluntary spirit' (e.g., Interviewee #33, 11 November 2014; Interviewee #17, 23 Sep 2014). Eventually, intermediaries came together and capitalised on their networks for a shared cause (Lin 2001) – in this case, 'rule of law' development. I further outline the emergence of such shared focus on rule of law development in Chapter 5. Next, I

[114] During military rule it was common practice to put anyone from the general population to proclaimed political dissidents under the surveillance by the MI, a structure of intelligence and specialised security agencies, in the quest to abolish opposition (Selth 1998).

[115] Rottenburg (2013, cited in Behrends et al. 2014, 18) suggests that the reception of models is dependent on the 'way it is delivered or mediated' because 'a person or corporation with a certain charisma can for example convey ideas better than someone else' (2014, 18). Similarly, Santos (2006) argues that judicial reform projects by the Bank are in demand even when they are not part of conditionality requirements because they carry 'built-in incentives' often based on relationships between Bank staff and government officials of the country in question (2006, 296). Such observations correspond to what this thesis finds in relation to the characteristics of rule of law intermediaries in Myanmar and if the transfer of the rule of law model is examined in more detail an explanation for the way it is translated can sometimes be found in the relationships between individual actors. In Chapter 6 I further elaborate on the importance of 'personality' in the selection of local intermediaries.

provide an overview of how intermediaries accumulated foreign capital during military rule.

4.2. Rule of Law Intermediaries' Foreign Capital

During military rule, some individuals were able to accumulate 'foreign capital' through their connections to international actors, which later helped position them on a path towards becoming intermediaries (see also Gonzalez 1972).

At the time, being associated with foreign organisations was a risky undertaking and many such organisations had either been expelled or put under strict regulation. For example, in the wake of the 1962 coup, public information libraries of embassies, private foreign aid organisations (for example, the Ford Foundation, British Council and the Asia Foundation), the Fulbright programme, and British and American language training initiatives had been forced to leave the country (Taylor 2009a). In addition, contacts with foreigners were not encouraged and media control meant that the country could be cut off from foreign influence (Steinberg 2001). When foreign organisations were allowed to return to Myanmar and take up some language training activities, intermediaries studied English at the British Council or American Centre and became engaged in some affiliated political activities. Such activities helped build intermediaries' networks with actors both inside and outside of Myanmar.

International actors suggested that the purpose of their previous interactions with 'reform minded individuals' (Interviewee #20, 12 November 2014; Interviewee #28, 22 October 2014) was to sensitize them to foreign ideas and knowledge and to prepare them for future transition. Similarly, Hammerslev (2006) finds that the foreign intervener in his study, the American Bar Association's Central European and Eurasian Law Initiative (CEELI), deliberately worked with people at the local level in Bulgaria

'who were able to take "power away from the previous regime" and with people who agreed on the priorities of the development of law' (2006, 75). He shows how the national legal field was transformed as a result of brokers of 'global principles,' who used their political and social capital to introduce foreign ideas 'into … national battles' by drawing on 'the international capital gained from the international investments in the national fields' (2006, 75; see also Dezalay and Garth 2002, 8). Nevertheless, Hammerslev (2006, 77) recognizes a contestation between 'Westernised lawyers and judges' and local lawyers and judges' in pushing reforms forward.

Rule of law intermediaries' access to international capital helped 'amplify' their work on rights-related issues at home (Risse-Kappen, Ropp, and Sikkink 1999). Intermediaries also drew on their international capital to gain 'local buy in,' for example, by accumulating resources at local levels, providing links to foreign actors, or by signalling their importance by being selected to travel abroad. Next, I present some of the activities that helped build intermediaries' foreign capital in more detail.

4.2.1. Foreign Training

Rule of law intermediaries gain competitive advantages in the emerging rule of law assistance field because of their English language skills, especially because communication is of strategic importance in linking actors who do not share the same language or culture.

Speaking about those who studied English at the American Centre or British Council, a foreign programme manager explains:

> They all went through English training and some more political training. We had the safe space to train the cadre of well-connected and well trained individuals, averse in an understanding of international institutions, knowledge and skills to get things moving when the country was going to open. (Interviewee #20, 12 November 2014)

This suggests that one of the objectives of such trainings was to prepare individuals for future transition and support potential agents for change. Educational institutions are effective in transmitting and passing on 'social capital in the form of social rules and norms' (Fukuyama 2000, 10); in this case, however, we can assume that foreign educational institutions rather promoted capital in the form of 'foreign' norms.

As a result of these initial engagements with foreign actors, several intermediaries were successful in their applications for foreign education and scholarships (see e.g., British Council). One local lawyer, for example, suggested that everyone who was engaged in one of the political book clubs 'got' foreign education (Interviewee #14, 13 Dec 2014). He was not claiming that it was an easy process, but recalled that application requirements were hard and that a lot of pocket money had to be spent on taking the courses. Thereafter, students needed to secure permission to leave the country -- which at the time was seldom easy. One local lawyer and intermediary recalls the worry he felt the first time he was on a plane, until the plane took off, and then he felt complete relief (Interviewee #17, 23 September 2014).

Before intermediaries left Myanmar to study abroad, they had often completed a university education at home on topics that included law or economics. Thereafter, they studied in the U.S. or U.K. or in places closer to home, for example, Hong Kong, Japan, Thailand, or Singapore. Scholarships were provided by the host country or philanthropic organisations. Intermediaries' education abroad included topics such as international law, international relations, human rights, development, politics, and transitional justice.

4.2.2. Previous Contact with Foreign Development Actors

Foreign capital was further accumulated through intermediaries' contacts with foreign actors through their work on aid projects. Contact with development projects, where individuals get to learn about industry expectations and 'development lingua', has been identified as key for becoming a successful intermediary (Bierschenk et al. 2002, 20-21). In the case of Myanmar, a majority of rule of law intermediaries had previous contact with foreign development actors through projects within the country, on both sides of the Thai-Burma border, and a few in the U.K. or U.S.[116] Some of the more junior intermediaries, however, often got their first assignment with international organisations after the more recent influx of rule of law development actors.

The range of jobs varied from youth development programmes, embassy jobs, Christian-, livelihoods-, or health organisations, or UN agencies. Even if their previous development practice involved topics other than rule of law, these experiences taught intermediaries about development industry expectations, codes, procedures and resources, as well as possibilities (see also Massoud 2015).

4.2.3. Exposure Trips

Intermediaries' accumulation of foreign capital was also enhanced through 'exposure trips' which commonly make up as significant part of development assistance, sometimes offered as reward for 'good behaviour' (see e.g., Gibson et al. 2005). For example, a 2013 Myanmar Assessment by the United States Agency for International Development (USAID) stated that: 'Following a demonstrated commitment by

[116] Development activities at the Thai-Burma border especially developed in the aftermaths of SLORC take-over in 1998 when protestors (students and others) fled to the border, some got involved with ethnic insurgency groups (Lintner 1989, Steinberg 2001).

Burmese judicial leadership through investment in political will, time, money or human resources, study tours to appropriate jurisdictions in the region may be considered' (United States Agency for International Development 2013, 9).

Exposure trips for selected individuals in Myanmar were offered when possible before transition started, but accelerated thereafter. The trips often went to countries that had been through (allegedly) similar transition (e.g., Cambodia and South Africa); ones that hosted global conferences (e.g., Japan and Switzerland); or where exchange study programmes in the form of shorter visits were offered (e.g., the U.S., Australia and New Zeeland).

The aim of such trips was to provide exposure to different ideas, systems and working procedures. They were also used as an opportunity to build personal relationships between key leaders within the government and civil society who sometimes attended the trips together. One rule of law programme manager described the rationale: "You identify people who seem to be doing good stuff … then take them on an exposure trip" (Interviewee #28, 22 October 2014). Another suggested that, "We choose people with the idea to build relationships between government and civil society … it was about finding those key leaders" (Interviewee #20, 12 November 2014).

You would expect that exposure trips provide a good opportunity for individuals to learn about 'foreign' ideas. Some intermediaries commented that they learned a lot from such trips (e.g., Interviewee #33, 11 November 2014; Interviewee #17, 23 Sep 2014; Interviewee #55, 3 October 2015).

Foreign practitioners sometimes complained about the lack of interest shown by participants on such trips, or about the fact that they did not seem to 'get' the purpose of the trips. For example, one foreign practitioner expressed disappointment when travelling with a group of local lawyers from Myanmar to Cambodia to meet with Cambodian lawyers who had been involved in the transitional justice movement. The

Myanmar lawyers allegedly showed no interest in talking to the Cambodian lawyers and remained largely quiet during what was described as an awkward meeting about transitional justice. This should not have come as a surprise, had the foreign practitioner been more understanding of the sensitivity of the topic of transitional justice in Myanmar (personal observations, for example, from learning that transitional justice trainings repeatedly failed to be allowed permission to be conducted; informal conversations, field notes, 29 September 2014; October 2016; see also (Holliday 2014). There is also the vexed issue of which countries aid recipients are comfortable being compared with or analogized to – international observers may see points of connection between Cambodia and Myanmar, but Burmese intermediaries may not.

One foreign lawyer suggested that individuals liked to participate in exposure trips not only because it allowed them the opportunity to travel abroad but also because it signalled to the broader public that made up for their potential political constituency that they were selected and thus special (Interviewee #40, 9 Dec 2014). If such observation is correct, it indicates that exposure trips helped build intermediaries' powers at home, as in the case of Ma Thida Aye (above) who decided to start her own legal aid NGO after such a trip; making use of the 'foreign capital' that she gained to further 'amplify' her work on rights related issues at home (Risse-Kappen, Ropp, and Sikkink 1999).

That the chosen few feel proud to be selected was apparent, while the frustration from the ones who were left behind was also sometimes voiced. For example, one local lawyer complained that foreigners often picked the same junior lawyers for exposure trips (Interviewee #49, 11 Dec 2014). That comment also connects to perceptions by intermediaries themselves: that their linkages with foreign actors were not always seen as positive.

4.3. International Strategies to Build Power at Home

In Myanmar's nationalistic atmosphere, links to foreign actors are not seen in an exclusively positive light.[117] Thus, while intermediaries draw on their international capital, they are sometimes reluctant to be associated with foreign interests, and their motivations for working in the field relate more to their attempts to build social capital for their own agenda, rather than for work they perform for foreign development actors.

One local lawyer and intermediary, for example, explained that he had ambivalent feelings towards his work with international organisations because he was worried about his reputation in the larger community. He told me that he had a feeling that he had to "get out of this business" and expressed an urgent need to be "'free-float next [election] year" if he was to be able to fulfil his political dreams. The main reason, he suggested, was because "people" lacked trust in international organisations:

> You get some criticism here. People think that if your project got 6 million it means that you personally got the money; they will tell me, "Hey you're rich now!" They don't trust foreign funded organisations and they don't like it - I have to get out of this business if I want to be in politics… they don't think any foreign organisations do it only because of good will. (Interviewee #14, 13 December 2014)

The local lawyer also explained that, because of such complexities and his political motivations, he was "not attached to any organisation", yet we can assume that many of his foreign colleagues considered him attached to their organisation.

When intermediaries move between several organisations and assignments this often results in criticism from their foreign employers -- that it is hard to get them to carry out the 'real' (i.e., legal technical) work they are hired to do (field notes, December 2015). Instead, intermediaries were perceived as spending too much time 'attending conferences' or meetings (field notes, May 2014). This might be suggestive of de

[117] I review issues pertaining to nationalism in more detail in Chapter 7.

Sardan's idea that intermediary competences do not receive much recognition from the institutions they belong to (2005, 170). Still, a counter-balance to such views is the significance foreign actors ascribe to intermediaries' networks (mentioned above), which we can assume were being fostered through conferences and meetings.

Intermediaries themselves comment that being independent is a Myanmar cultural trait and that they need this degree of freedom in their work life. However, it appears as if intermediaries need to signal that they are unattached to foreign organizations because they perceive the association with foreign interests as potentially damaging for their political careers. An intermediary expressed frustration over the way his work for foreign organisations was perceived:

> Some people really hate me, but for most I am just misunderstood, they look at me and most think "Who is this guy?" I am their junior and I am telling them about human rights and democratic values … but by now they appreciate me, they know my intentions … I do this for the younger generations. (Interviewee #17, 23 September 2014)

Intermediaries' motivations are thus influenced by ambivalence: the trajectory of their social promotion can be facilitated through foreign capital, but they need to constantly balance this against societal distrust of foreign interests.

Some foreign practitioners are aware that their local staff or consultants have political motivations. For example, a foreign programme manager explained that one of her local staff "Has political aspirations and was open about it from the beginning. He wants to start his own political party. If he leaves us it will be for that reason" (Interviewee #3, 8 May 2014). Employers in this study had several reflections on intermediaries' motivations:

> Of course there is vested interest everywhere but this is everywhere, why else would people do it? But there is also a common interest. (Interviewee #24, 14 October 2014)

> I think they are doing it for the career opportunity and a strong desire to contribute to the transition in their country. It's a good opportunity for them. (Interviewee #31, 10 November 2014)

> We are very lucky that they are just very happy about contributing to their country. Our senior staff might go into politics someday, she has mentioned that. (Interviewee #25, 3 October 2014)
>
> I just take them at their word which is genuinely to support justice, promote legal aid etc. (Interviewee #9, 23 May 2014)
>
> I have seen examples in other countries where organisations have unclear interests but not here. (Interviewee #9, 23 May 2014)
>
> Money. International organisations pay two to four times more than local organisations. (Interviewee #2, 7 May 2014)
>
> An interest in working with internationals and being exposed to international practices. (Interviewee #2, 7 May 2014)
>
> The assumption would be that they want to help build their country but I don't know for sure. (Interviewee #2, 7 May 2014)
>
> She is just a very helpful person, happy to help as much as she can, but also extremely interested in legal practice. (Interviewee #8, 22 May 2014)
>
> I don't think that they are motivated by career. (Interviewee #8, 22 May 2014)

We see from this overview that some employers remain unaware of the contested spaces intermediaries navigate, and to what extent they perceived their association with foreign organisations as damaging for social promotion. One foreign practitioner was more open about her scepticism about intermediaries' motivations:

> So many of them [intermediaries] are involved in politics … all are in it for politics … which of course makes you wonder about their own interests … their interests are not in the work they do for foreign donors. The donors turn on a sort of wilful blindness … they don't want to see what might be happening as it is not going to advance their development agenda. (Interviewee #40, 9 December 2014)

This foreign practitioner was worried about what would happen with rule of law assistance activities after the 2015 elections: "What if all will go into politics?" (ibid). Foreign practitioners also voiced concern over intermediaries' strong connections to the NLD or its splinter or affiliate groups (see e.g., Interviewee #8, 15 May 2014).

4.4. Conclusion

In this chapter I explored how intermediaries accumulated foreign and social capital during military rule: capital that was central for their ability to operate as intermediaries in the rule of law assistance field in Myanmar after political transition. That overview also revealed commonality in the backgrounds of some of the intermediaries of this study, for example, that they were politically engaged, had studied English during military rule, and had gained access to foreign education and work opportunities for foreign organisations.

After political transition, rule of law intermediaries mobilised the foreign capital they accumulated during military rule within the rule of law assistance space that emerged. This was evident, for example, in the way intermediaries used their networks to select who got to be included in rule of law activities, in the way they were able to travel more freely across Myanmar and thus became the satellites for new ideas and the rule of law model, and in the way they used their foreign language skills as knowledge brokers who channel information and know the languages of actors on 'both sides.'

Access to intermediaries' networks is imperative for foreign actors and their rule of law assistance efforts. The networks intermediaries accumulated during military rule stretched beyond the formal and informal channels foreigners were subsequently able to access. Foreign rule of law promoters expressed an urgent need to access intermediary networks; they realise that they are reliant on these in order to achieve the influence necessary for rule of law assistance efforts. At the same time, they have ambivalent feelings towards using informal channels. Some expressed a concern over the fact that too much in the country was done through charismatic personalities and personal networks -- especially when those networks entail political obligations or aspirations.

I argued that intermediaries' 'international strategies' of using foreign capital to build their 'power at home' has been supported by foreign actors in preparation for democratic transition and that rule of law intermediaries' access to international capital helps 'amplify' their work on rights-related issues at home. However, I showed how the use of foreign capital was not only to intermediaries' benefit, because of existing distrust of foreign interests (a theme I explore in more detail in Chapter 7). This also creates ambivalence for intermediaries, who apply different strategies to hide their connections to foreign actors. However, while intermediaries were reluctant to be associated with foreign capital, they still need to be in a position where they can use their networked resources to channel aid money or development activities to local levels in order to gain political influence.

International and local strategies to build power at home are thus characterised by mixed motivations and aims. I explore that theme in more detail in the next chapter, which analyses the emergence of rule of law assistance in Myanmar after political transition, which in turn resulted in a need for intermediaries.

Chapter 5. Rule of Law Assistance: The Emergence of Actors, Trends and Technologies

After 2011 in Myanmar, the sudden increase in development assistance gave rise to gradually connected international, national, and local structures, as civil society, the Myanmar government, and foreign development agencies worked to accommodate increased project supply and funding (Ware 2013). Accompanying the acceleration of development assistance was the introduction of a rule of law development model, established in detail in Chapter 3, that matched national rule of law rhetoric, but that differed significantly from the meaning the term had come to have in Myanmar where it read as 'law and order' or 'rule by law' (Cheesman 2009).

The foreign organisations that sought to introduce a rule of law model in Myanmar were thus met by local and national rule of law counterparts who held different values and understandings of how to best approach development processes that involved the thing they all called 'rule of law'. In the confusions that accompanied new relationships being established, intermediaries emerged to navigate the spaces where rule of law development counterparts needed to negotiate their different values and understandings.

Development anthropologist Long's (2001) concept of an 'interface' is used in this chapter to uncover that dynamic of interactions between rule of law counterparts. The concept seeks to describe the spaces that emerge when development actors get together to contest, accommodate, or bridge their different values and understandings. The interface is thus the space that intermediaries navigate, where change happens in their hands as they 'appropriate a model and relate it to their own understanding of both the model's origin and intention and situation to which it is supposed to be immersed' (Behrends et al. 2014, 14). In the case of Myanmar, the interface is especially

useful because the country was disconnected from the outside world as a result of decades of military-enforced isolation. As a result of this isolation, the landscape of rule of law assistance was particularly contested, and so rule of law interventions required support and guidance from local intermediaries.

In this chapter I present the field of rule of law assistance as it was established in Myanmar after 2011. By doing so, using evidence from my fieldwork, I answer my research question: What social processes transform certain actors into intermediaries?

Myanmar conforms to theories about the emergence of intermediaries which posit that, the catalyst for the emergence of intermediaries is often a process of political change. Anthropologists have established that these processes of political change can include, for example, authoritarian regimes transitioning to more democratic systems. As a result of these processes, foreign development aid may increase and lead to new relationships between foreign and local actors that in turn give rise to intermediaries who negotiate between the two parties (Bierschenk et al. 2002; de Sardan 2005). Historically, those political processes have included the legal and regulatory reforms introduced by colonial rule which result in the rise of intermediaries who were necessary to administer colonial states (Mair 1969, Lawrance, Osborn, and Roberts 2015, Kuper 1970).[118]

By analysing the interface in Myanmar, we can uncover a space of contestation that has been overlooked by many studies of the rule of law assistance field. This chapter reveals some of those points of contestation: the actors' differing motivations for engaging in rule of law development work; donors' lack of knowledge of the local

[118] Also, in the post-colonial setting local leaders continued such roles. For example, Badgley (1970) suggests that 'intermediary leaders' (often notable town residents) in post-colonial Burma were common because government policy required channelling through intermediaries in order to be successful. Intermediaries also functioned as 'translators of public sentiment' from the local to the urban level (1970, 1).

setting; and the dynamics of power relations between donors, local counterparts, and intermediaries.

To introduce the field of rule of law assistance as it was established in Myanmar after 2011 this chapter begins with the main themes that emerged from the 'ice-breaker' question that I used to open my interviews with: "When did rule of law assistance accelerate in Myanmar?"[119] I asked this question because people's memory of the initiation of rule of law assistance in Myanmar was still fresh at the time of my field data collection[120] and because I was interested in their lived experiences of that change. I outline those accounts of contemporary rule of law assistance in Myanmar and show how the various ways of translating the rule of law model resulted in contestations between development counterparts. I present accounts of exemplar rule of law actors and projects, rather than an exhaustive inventory of the field. The data I draw on for this part of the analysis is based on publicly available documents describing development actors' rule of law work in Myanmar, vacancy announcements for rule of law positions in Myanmar, non-public documents shared with me during the course of my field work, and responses during my interviews in the field.

This chapter concludes that because international, national and local understandings and approaches to rule of law development differed and were challenging to align, intermediaries emerged to mediate friction about issues such as: monetary compensation; applications for funding; the best approach to achieve rule of law development; donor involvement in local affairs; and institutional constraints that, according to intermediaries, foreign actors were not able to fully grasp.

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[119] I link these interview responses to available sources that include news reports, articles and government documents.

[120] As mentioned in Chapter 1 the possibility to observe the initial moment of rule of law assistance and the relationships that were created between new development counterparts in Myanmar is of significant importance for building the main analysis and argument of this thesis.

5.1. Rule of law on the Political Reform Agenda

As part of the changed political landscape in Myanmar after 2011 (that I outlined in Chapter 1) 'rule of law' entered the new transitional discourse as the Myanmar government opened up to a global community of development actors. For example, in 2012, the Framework for Economic and Social Reforms (FESR), a document intended to provide a 'policy tool of the government to realize both the short term and long-term potential of Myanmar', expressed the government's objectives for rule of law reform (Government of Myanmar 2012, 45):[121]

> **8.4. Rule of Law**
>
> 116. GOM [Government of Myanmar] … intends to open up the process of review of legislation to allow for scrutiny and feedback from all interested stakeholders prior to parliamentary debate, approval and subsequent oversight. GOM, in collaboration with the parliament, will improve citizens' access to law, and to increase public confidence in and abide by the existing laws, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. It will also pay attention to address the incidence of violent or non-violent crime, lack of effectiveness and predictability of the judiciary, and questionable enforceability of contracts; thus, the certainty of doing business will be increased, thereby resulting in increased private investment and economic productivity... GOM will also undertake legal and judicial reforms to improve th [sic] independence and effectiveness of the judiciary to improve the rule of law as well as independent prosecution, enforcement, and legislative oversight.

In the Framework the rule of law is seen primarily as a longer term development goal but is mentioned also in relation to 'quick-wins' of 'Governance and Transparency' (FESR 2012, 6) and 'Employment, Population and Immigration' (FESR 2012, 37). The latter section suggests that the government will establish 'an effective monitoring system in the border areas in order ensure [sic] that the rule of law will prevail' as a solution to 'inward migration … that is causing friction with local populations' (FESR 2012, 37).

[121] In addition, the 2013 Nay Pyi Taw Accord for Effective Development Cooperation, described as the localization of global accords, drafted in cooperation with 'development partners in a spirit of mutual benefits and accountability' (p 1), mentions government commitment to 'Strengthen the rule of law and improve access to justice' as a national priority (The Government of the Republic of the Union of Myanmar 2013).

Rule of law is here seen as a social control mechanism and the expression indicates that what the FESR has in mind in this case is that laws should rule (concepts that may be referred to as 'rule by law' or 'law and order' (Munger 2017, Krygier 2017)) rather than a consideration of more substantive questions of governance. The escalation of the crisis in Rakhine shows a bifurcated trajectory: where governance and access to justice may have improved for citizens during the period of this study, the treatment of the stateless minority, the Rohingya, is repeatedly being referred to one of dealing with 'illegal migration' (Ahsan Ullah 2016).

My interview data also suggests that there was an increase in discussions of rule of law as part of the political reform agenda in Myanmar after 2011. In reply to my question: When did rule of law assistance accelerate in Myanmar? Respondents (both local and foreign) repeatedly replied that they felt more confident to engage in rule of law activities after having heard (then) President Thein Sein mention the term in his speeches (e.g., Interviewee #20, 30 September 2014), because (then) opposition leader Aung San Suu Kyi had been appointed Chair of the newly formed 'Rule of Law and Tranquillity Committee' and thus spoke more often about rule of law (e.g., Interviewee #46, 9 December 2014), and because of the increased openness of national media (e.g., Interviewee #43, 1 October 2014), that published rule of law related news of a character that had not been allowed in the past. I present these events in detail below.

Some interviewees however remained more sceptical. For example, when I met with a former Myanmar judge who was now working for a foreign donor, she lowered her voice and whispered: "People think that you can speak freely now but it is still only within a certain frame" (Interviewee #27, 7 October 2014). This comment reflects a theme that other interviewees in Myanmar raised and which I also addressed as a potential ethical concern in Chapter 2: the notion that the military could at any time

resort to their old behaviour (Callahan 2009).[122] When I spoke to them in 2014, some of my interviewees told me that they were uncertain about the government's intention to reform. Some, however, used the opportunity to engage more openly in reform work that they had already been involved in previously. For example, one key intermediary proudly showed me that his work had been featured in a local newspaper (Interviewee #17, 23 Sep 2014). However, even three years after the initiation of reforms he confessed that he was concerned over that exposure. That concern is something that I perceived in conversations with other interviewees who were also reluctant to reveal too much about their work, especially when it involved working with foreign organisations -- not always because they felt that there was a risk involved, but simply because they did not know what the government 'was up to' this time.[123]

5.1.1. Thein Sein's Speeches

Respondents identified Thein Sein's speeches as one of the reasons why they perceived rule of law as having become an acceptable topic of discussion. For

[122] Skidmore (2003, 8) provides an intriguing analysis of how the notion of time, as centred around the wait for violence pervaded people's minds in Myanmar during military rule: 'Burma is heavy with the continued expectation that "something will happen," its time framework conceived in terms of "waiting on events."'

[123] Such concerns are not surprising as Myanmar has gone through similar flirtations with the international community throughout its history, only to resort to old practices. For example, in the late 1990s when in need of foreign investment, the regime had tried to carefully open up to a foreign private sector (Steinberg 2001). In early 2000 the government improved their cooperation with international human rights and humanitarian organizations, including the International Committee of the Red Cross (ICRC), the International Labour Organization (ILO), and the United Nations Children's Fund (UNICEF), as these were allowed to increase their activities in the country (Pedersen 2008, 8). The government also ratified a number of international human rights conventions and the release of Aung San Suu Kyi from house arrest in 2002 contributed to improved foreign relations (Pedersen 2008, 31, 219). However, as Pedersen shows, '[T]he growing willingness of the regime to discuss human rights … was not matched by a commitment – or ability – to redress the general climate of impunity' that was prevalent in Myanmar (2008, 8). Instead, relationships with the outside world deteriorated again, especially after the 2003 attack on NLD members and Aung San Suu Kyi (and her subsequent detention for endangering the security of the state under section 10(a) of the 1975 State Protection Act) (Pedersen 2008, 31-32, 136). Moreover, the special rapporteur on human rights was not allowed to visit Myanmar from 2003, discussions to release Aung San Suu Kyi ceased that year, and in 2004 several INGO's had their activities constrained again (Pedersen 2008, 221). A behaviour that had Pedersen concludes that; '[t]he army and other security forces show few signs of changing their heavy-handed behaviour' (Pedersen 2008, 8).

example, in relation to Thein Sein's March 2011 inaugural address to the Parliament (*Pyidaungsu Hluttaw*), a foreign development practitioner who had spent several years in Myanmar before the transition explained that:

> Thein Sein's inaugural speech mentioned rule of law and good governance. It was a surprise to all. However, nobody knew where to start, how far can we go, what can we do? We had to test the water. We were very careful when designing a project so that it would not be too political. 'Rule of law' is a good kind of frame for it, what does it mean? I mean it can mean anything. It gave us a nice wide frame to use. Because it had been used in official speech it was a good opportunity to bring actors together and show that 'hey he said it' so we can do something here. We keep it more amorphous without being wishy washy. (Interviewee #20, 30 September 2014)

'Rule of law' (*taya-ubade-somoye*) was in fact not a new term in political speech in Myanmar; the term was used for decades to stress and maintain the importance of maintaining 'law and order' (*ngyeinwut-pibyaye*) rather than substantive and procedural rights (Cheesman 2015). However, the importance the foreign practitioner put on the term's re-packaged use in official speeches is interesting because it demarcates the perceived belief that the Myanmar government was ready for a different rule of law, one that was outward-looking and connected to substantive rights. The terms uses after the 2010 elections had an effect on foreign actors who had various degrees of previous knowledge of Myanmar politics.

In fact, Thein Sein's inaugural address (The New Light of Myanmar 31 March 2011) tells a rather confusing, but still progressive, story that is both historical and forward -looking and mixes messages of law and order, substantive rights and military control:

> We guarantee that all citizens will enjoy equal rights in terms of law, and we will reinforce the judicial pillar … So, we will amend and revoke the existing laws and adopt new laws as necessary to implement the provisions on fundamental rights of citizens or human rights … we have to continue to work constitutionally and democratically in the nation's legislative, executive and judicial affairs … we need to convince some nations with negative attitude towards our democratization process that Myanmar has been committed to see the interests of the nation and the people to serve those interests only in the constitutional framework and not to try to disrupt democratization process outside the constitutional framework and harm peace, stability and the rule of law … The State Peace and Development Council has built political, economic and social foundations necessary for future democracy since 1988 to date. So, we sincerely thank all the people, all the

> Tatmadaw members and all service personnel for achieving peace, stability and the rule of law and building development infrastructures instrumental to a democratic nation.

The rule of law announced here clearly connects to democratisation, which might have followed from the overall goals of the transition and may be functioning as a way to engage with the international community (Pedersen 2014) because it matches broader democratisation discourse at the time (Cheesman 2014). Nevertheless, many aspects of the speech remained linked to elements of law and order. These are expressed, for example, in the continued regard for the military as an achiever of 'peace, stability and the rule of law' (ibid).

A more procedural use of the rule of law was expressed in Thein Sein's speech delivered at the Parliament in August (The New Light of Myanmar 22 August 2011) the same year:

> … the judicial body … has assumed its charge of duties in accordance with the principles of the State Constitution such as to administer justice independently according to law; to dispense justice in open court unless otherwise prohibited by law and to guarantee in all cases the right of defence and the right of appeal under law … We are also implementing the proceedings we have pledged to this Hluttaw such as ensuring good governance, clean government and democratic practices, fundamental rights of citizens, the rule of law ...

The major pitfall with such a pledge is that the principles of the 2008 Constitution fall short in several ways with regard to procedural guarantees of justice (Williams 2014, Myint Zan 2017). For example, the 2008 Constitution guarantees continued military influence over central rule of law institutions, including the parliament, the police force, and the General Administration Departments.[124]

Thein Sein's speeches were not dramatically different from some of the public statements on 'rule of law' or 'law and order' that had been made by the previous

[124] The 2008 Constitution also falls short in progressing the constitutional issues that feeds the continued problems of conflict in Myanmar. For example, as Williams (2011b, 99) points out, the 2008 constitution 'makes no provision for meaningful power sharing among the ethnic groups, and it gives the minorities no protection against continued military oppression'.

military regime (Cheesman 2009). However, the changed political climate and the fact that Thein Sein represented a civilian government might have given his words a different resonance. The context he was operating in suggests a desire to signal that change was under way and that Thein Sein could be seen as a reform-minded leader, brave enough to challenge hard liners (Pedersen 2014, Nyein Nyein 14 May 2012). Because of the increased attention given to 'transition' in Myanmar by outside observers the government took an interest in showcasing their 'reforms' to the world (see Risse-Kappen, Ropp, and Sikkink 1999 10, 12 for a discussion of how national governments change their human rights rhetoric and practices in order to 'access the material benefits of foreign aid'). While foreign practitioners picked up on such rhetorical showcasing in public speeches, local actors remained more sceptical. For example, a local rule of law programme manager was convinced that, for the president and the military, rule of law continued to mean "Following their law and according to their law, they want a lot of law to rule the people and also see security as an important part" (Interviewee #24, 14 October 2014). In lieu of detailed proof of substantive reforms in order to improve the conditions of those who suffered under malfunctioning 'rule of law', the programme manager's scepticism is not surprising. The term (as adopted as part of a new reform language) might have added more confusion to what the concept actually had the potential to mean for Myanmar's transition (Cheesman 2014).

5.1.2. Aung San Suu Kyi

In November 2010, (then) opposition leader, Aung San Suu Kyi was released from house arrest. In 2012 she was appointed to head a new Parliamentary Committee on 'Rule of Law and Tranquillity' (Nyein Nyein 7 August 2012). Her appointment caused

some confusion about the regime's intentions in their transitional moment because Aung San Suu Kyi had long been considered a political force that they sought to eliminate (see e.g., Pedersen 2008, 129). For example, a somewhat sceptical government employee suggested that the Committee possessed little influence, and that the appointment of Aung San Suu Kyi as its head was intended to expose her inability to achieve reform (field notes, 5 September 2014). Nevertheless, Aung San Suu Kyi's new status as a global rule of law advocate had observers wondering if Myanmar was finally ready to receive international assistance for capacity building of the justice system and rule of law (e.g., Skidmore and Wilson 2010, 12-14).

Soon after her appointment as head of the Rule of Law and Tranquillity Committee in 2012, Aung San Suu Kyi was invited to several influential institutions around the world – her first trip abroad in 24 years (Spillius 29 May 2012). In Thailand, she appeared at the World Economic Forum meetings to discuss the need for the rule of law in Myanmar. She particularly emphasized the concept's importance for investment opportunities and the need for a 'clean' and independent judiciary (World Economic Forum 1 June 2012).[125] At the London School of Economics, Aung San Suu Kyi said that only under the rule of law can fairness and freedom be restored to Myanmar (London School of Economics and Political Science 12 June 2012). She stressed the importance of rule of law and judicial reform for a 'democratic Burma' when she visited Yale University (Gonzalez 27 September 2012). When speaking at Harvard University's Institute of Politics she expressed a need for assistance from other

[125] At around this time, Aung San Suu Kyi also sought advice on the proposed new foreign investment law and enrolled Hong Kong based Anglo-Myanmar commercial dispute resolution lawyer Robert S. Pe as her senior adviser on legal affairs (LexisNexis Rule of Law in Myanmar). Robert S. Pe initiated his professional engagement in Myanmar when he chaired a Seminar on International Arbitration 'A Practical Introduction For Myanmese Businesses' for the Federation of Chambers of Commerce & Industry in Yangon in May 2012. Recently he has spoken internationally on topics including 'Law reform in Myanmar,' 'Reforming Myanmar's Legal System,' 'Myanmar: time to invest?' and organised seminars for the Myanmar Parliament on 'International Arbitration and the New York Convention' (Orrick Lawyers).

countries, including lawyers and judges, to establish the rule of law in Myanmar (Harvard Kennedy School 28 September 2012).

Aung San Suu Kyi's international tour was not, however, the debut of her ideas about rule of law and its importance for Myanmar. She and the NLD had talked about rule of law after the elections in 1990 (local programme officer, interviewee #24, September 2015). We also find references to rule of law in her early writings, where she links the concept to the prevention of corruption and highlights its importance for a society where people can live with 'human dignity' and with 'freedom from fear' (Aung San Suu Kyi 1991). In 2002 she described the Government's practices of incarcerating political dissidents as the 'misrule of law' (Aung San Suu Kyi 10 November 2002).

Still, it was after the more open political environment in 2011 that Aung San Suu Kyi began to speak more frequently and broadly about rule of law and especially, as shown above, in relation to democratisation and foreign investment opportunities (see also, local rule of law practitioner, interviewee #46, 9 December 2014). On the one hand, her expansiveness in speaking of the 'rule of law' should perhaps not be too surprising. In a setting where the military for decades used the rule of law to signify 'law and order' (Cheesman 2015) and after transition tried to hijack the term to signal positive reforms, it might be that she had to claim the concept any way she could in opposition to the uses by the military and their affiliated politicians.

Aung San Suu Kyi's broad and inconsistent use of the term did attract some mockery (Burma Tha Din Network April 23, 2013) but also some well-calibrated critique, particularly in relation to her statements on citizenship rights, which often contradicted her other uses of the term rule of law (Cheesman 2014). The easy slip into the language of 'obedience' and 'security' has Cheesman conclude that Aung San Suu Kyi and her party:

> [H] ave failed to articulate a conception of the rule of law that might travel with them during the ups and downs of democratization, towards whatever goals that they think matter for people in Myanmar. By going along with the seeming consensus about the rule of law, rather than by making plain what they want from it, Aung San Suu Kyi and her party have done a disservice to the concept, and to themselves. They have failed to discharge a duty of care that I think they owe to the rule-of-law ideal on behalf of their constituents. By playing fast and loose with the rule of law, they have jeopardized it rather than defended it. And when confronted with an idiom for the rule of law hostile to democratization, an idiom that resonates more with the language of dictatorship than with the language of democratization, they have had no rejoinder. (Cheesman 2014, 230-231)

Aung San Suu Kyi's party won a landslide victory in elections on 8 November 2015 (BBC News Asia 3 December 2015). After 2016 the conceptual confusion of what the 'rule of law' means for Aung San Suu Kyi was significantly put to the test when she suggested that tensions in Myanmar's Rakhine state were being handled according to 'principles of the rule of law' (Funakoshi November 3, 2016), while foreign observers variously suggested that the military treatment of Rakhine's Muslim minority, the Rohingya, constituted genocide or crimes against humanity (Aljazeera 30 November 2016). In 2018, with the benefit of hindsight, we know that the symbolism of Aung San Suu Kyi's appointment, her electoral victory, and the resulting optimism about rule of law change in Myanmar were to disappoint her supporters domestically and internationally.

5.1.3. Myanmar Media

Myanmar media were under government control and strict censorship during military rule (Nirmal 2012). After political transition in 2011 such past regulatory practices were eased and issues that previously had been deemed too sensitive to write about, including the rule of law, were increasingly reported and debated in national media (Pedersen

2014).[126] The change was noted by one of my interviewees, a local rule of law practitioner:

> Media allowed articles that were not allowed in the past. Then anything they wrote was linked to the rule of law … The word 'rule of law' became more and more prominent.' (Interviewee #43, 1 October 2014)

Some examples of featured articles in Myanmar newspapers in 2011 (shown in the table below) illustrate how rule of law was discussed in local and national media. For example, editorials voiced opinions about rule of law and articles reported on government and parliament members and their speeches, opinions, or statements on rule of law. They are significant, not only because they capture the combined essence of a more open political environment, but also because they give us insight to how issues of rule of law were reported and debated and consequently the way such ideas were framed and advocated for in public in Myanmar at the time.

Examples of rule of law mentions in Myanmar newspapers in 2011

News			
3 March 2011, The Yangon Times Journal 'What to do to help emerge new Jurisdiction?'	3 June 2011, The Mirror Daily 'Law officers will be respected only if they respect the laws'	30 June 2011, The Yangon Times Journal 'All must abide by laws enacted by parliaments and no one must be above the law'	21 November 2011, The Voice Journal 'Daw Aung San Suu Kyi says there must be a free judicial sector for rule of law'

[126] Recently, however, reporters were jailed under colonial legislation for reporting on the crisis in Rakhine state (Samet 19 January 2018).

Reports on parliament members' expectations for the future in a jurisdiction influenced by law, not people, and where Myanmar citizens will have the same kind of rights as those in other democratic countries. According to the article, a parliamentary member stated that judges in Myanmar should be free to make decisions as in other Asian countries, for example, Singapore, Thailand and Indonesia.	Reports that Union Attorney General Dr. Tun Shin met with law officers in Bago region (outside of Yangon) where he stated that law officers should respect the law and avoid taking bribes as only then will they be respected by the citizens and set an example for them.	Reports that, then Speaker of Parliament (Lower House), Thura U Shwe Mann, in his meeting with Yangon region parliament members, said that no one should be above the law and that parliaments and governments at all levels must abide by the law. Also, according to the article, the parliament has held workshops and arranged study tours of international parliaments to learn how to make laws and to practice check-and-balance policy between the parliaments, the government and the legislature.	Reports that Aung San Suu Kyi in a press conference on 14 November (a year after her release from house arrest) states that there should be no assumption that the justice sector in Myanmar is free, which is why people are imprisoned for their political beliefs and that rule of law requires a free judicial sector.
Editorials/Opinion Pieces			
11 May 2011, Weekly Eleven Journal 'Truth in human world'	21 November 2011, The Yangon Times Journal 'May all be equally protected by law'	29 November 2011, The Mirror Daily 'Abide by the laws, ethics and discipline'	7 December 2011, Weekly Eleven Journal 'Current jurisdiction can't assist democracy'
The author argues that a government that abides by the law is the best option and that past practices in Myanmar shows that such has not been the case as instead parties in power has abused the law for their own benefit and to prolong their position in power.	The author ends his argument with an optimistic outlook by suggesting that Myanmar's new government is paying attention to the voice of its citizens and realising the rule of law, therefore it is expected that all citizens will be equally protected by the law in the future.	An editorial argues that Myanmar citizens should abide by laws and rules at this time when Myanmar is moving towards becoming a developed nation and that laws must be made public to the people so that they can follow them accordingly and become good citizens.	The board of editors complain about the corrupt practices that prevail among judges in the country and suggest that existing legislation is unsatisfactory in taking actions against a corrupt judge and that therefore, new legislation should be enacted.

In the preceding overview, I sought to illustrate that rule of law became a more acceptable topic of discussion after political transition in 2011. However, 'rule of law' as the term was communicated by the Myanmar government and national and local media, did not necessarily correspond to the model foreign development actors had in mind

when they subsequently arrived in Myanmar to work on development promotion. Next, I introduce the influx of such foreign rule of law development actors, their stated rationales for intervention, the issues they sought to engage with, and the activities they focused on.

5.2. Establishing Room for Foreign Intervention

As foreign development actors arrived to work on rule of law reform in Myanmar they were faced with the country's malfunctioning law and justice institutions (see e.g., Cheesman 2012), and with the legal plurality (Merry 1988) of Anglo-Burmese statutory law, Burmese and non-Burmese customary law, colonial legal codes and military decrees, as well as diverse social and cultural norms about law and justice (Crouch and Lindsey 2014a, Denney, William, and Khin Thet San 2016, Kyed 2017). In this setting, finding legal sources was a process cloaked in mystery (Beyer 2015) and coercive colonial codes and military decrees continued to rule.[127] At local levels, access to justice was scarce and informal justice resolutions common (Denney, William, and Khin Thet San 2016, Kyed 2017). The lack of legal aid was recognised as a significant obstacle for people seeking legal remedies. Also, lawmaking processes were non-transparent and

[127] During New Win's proclaimed socialist and anti-imperialist rule, the bulk of colonial criminal instruments remained in force without any significant amendment (Cheesman 2011) and came in handy to suppress dissent of various kinds (Steinberg 2001). Callahan shows how the colonial legal definitions of 'crime' and 'internal security' brought murderers, cattle thieves, robbers, rebels, Buddhist monks, labor organizers, and starving, scavenging peasants into a legal system that treated them all similarly and for the first time ever as enemies of the state (Callahan 2004). Cheesman suggests that when the military regime kept the old colonial codes, tension arose between 'law and order as a political ideal, on one hand, and the stated aspirations of socialist legality, on the other,' confusing the often untrained judges (Cheesman 2015, 92). The codes were even 'reprinted and distributed to post-1972 courts, and senior officials rebuffed the complaints of lay judges, who found that the laws they were called upon to enforce did not correspond to the stated goal of building a socialist legal system' (Cheesman 2011, 824). Especially, the colonial codes came to trouble judges who were constantly reminded of their use by defence counsels or police officers who applied the codes in their daily work (Cheesman 2015, 92-93). By keeping the colonial codes in use, blame for inefficiencies in the new system could be referred to colonial legacy (Cheesman 2015, 94).

only open to public knowledge through the general news (Booth 2016).[128] Legal system infrastructure was in a dire condition: individuals waiting for trial were locked up in minuscule cages; court rooms were littered with case files; technical equipment was lacking; and buildings were in a poor state (personal observation, Yangon, October 2014). The 2008 Constitution continued to guarantee the military influence over central law and justice institutions, including the police force (Fuller 10 November, 2015),[129] even after the transition to an apparently civilian government.[130]

Foreign rule of law assistance actors were perplexed by the courts and their practices. For example, a foreign lawyer explained the disturbance she felt while observing a court hearing:

> During one case the prosecutor was cross examining someone and the judge was not there. This made me perplexed and frustrated. But for them [the lawyers] they did not want to adjourn and upset the judge. What is the meaning of these actions? The judge wanted it to go on. It is an administrative process, the end goal was to go through the entire process not to get someone guilty, and then pay off the judge. (Interviewee #3, 8 May 2014)

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[128] One of my interviewees suggested that, at the time, the sharing of draft laws might have even been illegal (foreign lawyer, interviewee #5, 16 May 2014).

[129] Ne Win's reforms changed the status of the police force, seen as remains of foreign colonial occupation, as it lost its independence (Selth 2013). While, Ne Win had plans to create a People's Security Force, more suitable for the new socialist ideology, the Burma Police was instead reformed as the People's Police Force: 'By then, however, responsibility for law and order had effectively passed to the Tatmadaw.' (Selth 2013, 7). Callahan suggests that it was the early failures of the colonial regime to 'establish effective local policing set the pattern of law enforcement that persists until today: When local affairs get unruly, the state sends in the military' (2004, 30). The continued disregard for the police force led to it being both under resourced and far from well regarded by the people (Selth 2013). Also, SLORC set out to reform the police force as a response to its reputation as exploitative, corrupt and officious (Taylor 2009, 452). In 1994 General Khin Nyunt, as chairman of a Committee for Reform of the People's Police Force Management System, had declared that its aims were to make the police 'earn public respect,' decrease corruption, and oversee regulations relating to police management and administration (14 March 1994). In 1995 the Committee renamed the Peoples police Force to the Myanmar Police Force, while introducing an array of reforms, including the promulgation of a Myanmar Police Force Disciplinary Law and a Code of Conduct in 1999 (The New Light of Myanmar 14 March, 2012). Attempts were also made to introduce a system favouring more community-based type policing to enhance its reputation which led to 'a comprehensive 30-year plan for the expansion and modernisation of the MPF [that] was endorsed by the military government' in 2008 (Selth 2013, 9).

[130] The 2008 Constitution is often described as the main obstacle to transition in Myanmar (Lintner 2013, 108). It is the product of a National Convention that was announced in 1992 to draft the guidelines for a new constitution (Diller 1997). Already through the National Convention, the guiding principles of the 2008 constitution were laid down, for example, the principles that ensures the Military's permanent control over a future civilian government, including the right to 25 percent of seats in parliament (Diller 1997). The Constitution was recognized through a nation-wide referendum held only two days after cyclone Nargis, that resulted in up to 135 000 casualties (Taylor 2009a, 2012).

The comment above reflects the fact that the court hearing took on a form similar to an administrative process, with little regard for procedural justice.[131] Courts in Myanmar also became known as endemically corrupt and characterized by a system of 'court brokers' and as places where the selling of case outcomes is common.[132] As mentioned in Chapter 1, the term for broker in Myanmar – *pweza* – had rather negative connotations, the corrupt court broker perhaps being a typical embodiment of such negative views. A foreign human rights lawyer was puzzled by the conversation he had had with a local lawyer: "I asked a lawyer if the judge was fair and he told me that the judge was very fair as he only accepted 'little money'" (Interviewee #2, 7 May 2014). The foreign lawyer concluded that the understanding of what rule of law means in Myanmar is "so different" from what "we know".

Similarly, the legal profession was caught in a system of endemic corruption. A local lawyer proudly suggested that he "never pays" because "When you know the law you don't need to pay" (Interviewee #17, 23 Sep 2014), however, this seemed to be an exception rather than rule (Cheesman 2015). When foreign development actors arrived in Myanmar, lawyers thus possessed little institutional autonomy because corrupt practices influenced 'every aspect' of their career (International Commission of Jurists 2013, 3). Consequently, the legal profession's 'quality' was assessed as low (New Perimeter 2013, 35).[133]

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[131] According to Cheesman the 'trial' in Myanmar has taken on such form in order 'to move the defendant from one part of their administrative processing to the next' while showing adherence to 'principles for law and order' (2015, 117, 120-121).

[132] Such practice has Cheesman, coin the term 'court marketplace' (2015, 105-107, 162). In the 'court marketplace' corruption is rampant and lawyers and 'case brokers' (e.g., court clerks, prosecutors, or a judge's relative) facilitate the exchange of money and case outcomes (Cheesman 2012).

[133] When the legal profession in Burma became nationalised in the 1970s, the freelancing members of the Bar were transformed into People's Attorneys with the state as their headman and under direct control by the legislature. As an effect, the Bar could not, as it had in the past, operate as an institution where political opposition could be safely discussed (Huxley 1998). Still, lawyers continued to play a role in Burmese political life. For example, during the 1988 protests, members of the Central Bar Council released an official statement condemning the violence used by the military on a peaceful demonstration as unlawful and against both the country's Constitution and international human rights law (Lintner 1989, 148). The Bar Council had also declared the sitting government (in 1988) as illegal due to the fact that the 1962 coup had violated the 1947 Constitution (Lintner 1989, 170). However, lawyers were to be severely

5.2.1. Rule of Law Assessments

The rule of law deficiencies that foreign development actors found upon their arrival in Myanmar contributed to assessment conclusions that the country lacked rule of law.

For example, the International Bar Association's Human Rights Institute conducted a 'fact-finding mission'[134] for seven days in August 2012 ' to understand Myanmar's prospects and needs at this important juncture and, more specifically, to find out how far it has begun to adhere to globally prevalent understandings of the rule of law' (2012, 6). In March 2013, also New Perimeter and Perseus Strategies (in partnership with the Jacob Blaustein Institute for the Advancement of Human Rights) published a 'Myanmar Rule of Law Assessment.'[135] A month later, the United States Institute of Peace published a 'Rule of Law Trip Report' based on a visit to the country from 9 February to 3 March 2013 .[136] The stated purpose of the visit was to collect information from actors in the country on suggested strategies, priorities, and challenges in strengthening the rule of law reform process as well as to explore how external actors could take a part in supporting such process. In October 2013, a USAID document was

reprimanded for their political involvements during the State Law and Order Restoration Council's military rule.

[134] Country visits and fact finding missions are part of IBAHRI's 'rapid response mechanism,' allowing the organization to 'react quickly to sudden events in countries, which may threaten human rights, the rule of law or independence of the judiciary.' The exact mandates of this mission included an examination of the judicial system (legal profession and judiciary included), especially in regards to its independence and functioning 'in light of the newly established human rights commission' and to analyse national and international legal norms with application and relevance to the judicial system, as well as 'examine any relevant related matters' (2012, 9).

[135] The Assessment's briefness and the authors' limited knowledge of the country is recognised: 'We have tried to provide a broad high-level review, but each major area requiring reform – e.g., legal education, access to justice, judicial reform – will require their own individual in-depth needs assessments and focused efforts … This assessment is based on the best information we were capable of acquiring, but there are large gaps in our knowledge' (2013, 5). The Jacob Blaustein Institute for the Advancement of Human Rights, however, describe the assessment as an 'in-depth assessment of rule of law reform needs in Burma' that will: 'provid[e] guidance and recommendations to all those who will engage with local actors in Burma. This will allow international actors to help move the law reform process from the current state where promises are made by Burma to the international community to one where reforms are implemented in Burma both on paper and in practice' (The Jacob Blaustein Institute for the Advancement of Human Rights 2013).

[136] USIP's trip was undertaken at the same time as the United States Government conducted an 'inter-agency rule of law mission' (USIP 2013, 13).

drafted to 'provide USAID/Burma with a set of interventions to promote and protect the rule of just law and civil liberties in Burma' .

The assessments define the rule of law with reference to regional and international documents including: the Venice Commission Rule of Law Checklist (2006); The Charter of the Association of Southeast Asian Nations (2008); and the 2004 UN Secretary General's definition of rule of law (outlined in Chapter 3). The assessments generally seek to demarcate the gaps in Myanmar's national structure of law and regulation and stress substantive aspects of global justice. More specifically, New Perimeter's assessment includes a section titled 'Lack of understanding of rule of law' where it asserts that 'While there is substantial talk about the need for rule of law and law reform, most people believe it means rule by law, and fail to appreciate the range of elements necessary for the rule of law to exist in a society' (New Perimeter 2013, 8). Similarly, USIP's report describes key discoveries as including the fact that the law is seen as irrelevant for people's lives:

> [T]here is no common understanding of the meaning of the term 'rule of law.' Communities lack knowledge of basic laws, legal procedures and mechanisms for accessing their rights. Many perceive the rule of law simply as a set of laws and institutions that, as currently constituted, are designed to reinforce existing power dynamics including the dominance of the security services and the wealthy over the society. (2013, 5)

Such statements seem problematic in light of IBAHRI's assessment that 'Any law reform process must begin with a common understanding of the rule of law' because 'agreement on basic principles will create an impetus for deeds' (IBAHRI 2012, 69).

Nevertheless, the assessments find rule of law is wanted among people in Myanmar:

> While there is not a broad understanding of what the rule of law actually is, government officials and the people of Myanmar repeatedly assert its fundamental importance to sustain any reform process. (New Perimeter 2013, 7)

> [A]lthough there was considerable uncertainty over what terms such as 'checks and balances' and 'rule of law' might require in practice, everyone seemed to welcome the predictability and greater stability that they implied. (IBAHRI 2012, 69)

> [M]any people [who] expressed support for a tripartite separation of powers, and rigorous checks and balances. Several admitted that their familiarity with both concepts was limited, because it was only recently that people had begun to discuss what they meant for Myanmar, but they seemed to be considering their implications with great seriousness. (IBAHRI 2012, 39)

Another repeated theme in the assessments is the lack of capacity to accept rule of law assistance that is being offered. The New Perimeter Assessment, for example, describes how '[T]here is a strong international desire among law schools, law firms, and lawyers to assist in improving legal education in Myanmar, but the Ministry needs to enable law programmes to accept this assistance easily' (2013, 36). At the same time, the assessment describes how the country does not have capacity to absorb excessive support and reform, and cautions that the government is trying to undertake too much, too quickly without the 'ability to implement programmes' (2013, 8).

The assessments provide important insights to how the rule of law model is used as a template through which development actors attempt to comprehend and diagnose local complexities. In this way, rule of law assistance actors separately, but at the same time collectively, contribute to the discourse of 'intervention needs' in Myanmar – needs that they eventually will, or have already, become involved in. These templates are powerful; the basic assumptions made in these documents tend to be continuously repeated until they gain the status of authoritative 'truths' that will guide development programming for years onwards (Roe 1989, 1991). While the assessments can help translate impressions into an understandable format that is in turn modelled after the international actors' own understandings of a model (Behrends et al. 2014), they leave little room for local or national legal variations and hybridity. Next, I present the rule of law assistance activities foreign actors introduced to support or engage with the issues they identify as needs in the reports presented above.

5.2.2. Foreign Rule of Law Development Actors

Foreign rule of law development actors became more visible in 2012 and 2013 when they arrived in Yangon to set-up offices, negotiate possible interventions, and initiate projects and programmes. Yet while transition was ongoing, their engagement remained cautious and mindful of the previous operational context (Ware 2012b) – Myanmar remained under the influence of a militarised leadership.

One expression of this concern for recent history was seen in the informal and ad-hoc nature of rule of law reform-focused INGO engagement. For example, a foreign lawyer described how, when trying to start activities in Myanmar, his organisation "[J]ust showed up and started networking, going to courts and visiting offices of lawyers and then initiated [their] own trainings, which was good for meeting local people" (Interviewee #3, 8 May 2014; for similar suggestions see also interviewee #4, 15 May 2014 and interviewee #15, 22 September 2014). In addition, several of the INGOs that I interviewed had begun, and today continue to operate, without formal registration under the 1988 Associations Law. A foreign practitioner explained: "We now have unofficial status but the government knows we are here. We are not registered and are not pursuing registration" (Interviewee #2, 7 May 2014). Some suggested that they would continue to work without registration after the passing of new legislation on associations in 2014, because the new regulation would entail reporting duties heavy enough to constrain them from conducting any substantial activities (e.g., Interviewee #3, 8 May 2014). These comments suggest that these INGOs continue to operate in a space that was overshadowed by the prospect of Myanmar government restrictions (Ware 2012c) even after political transition.[137]

[137] For an overview of legal constraints on civil society in Myanmar during military rule, see (Liddell 1997). Several of the legal constraints on civil society suggested by Liddell in 1997 remained in force also after political transition in 2010.

The lack of registration also had implications for how INGOs were able to engage the government as counterparts. One foreign practitioner suggested that the INGO had "no formal relationship with the government counterparts" but used "advocacy as a strategy to keep in contact with them" (Interviewee #08, 22 May 2014). When INGOs attempted to operate under the government's radar, they also tried to limit the amount of public information available about their activities (Interviewee #04, 15 May 2014). These strategies again indicate the different nature of foreign actors' engagements in a country with Myanmar's history of authoritarian rule, violence, and cautious international involvement (Ware 2012b).

Multilateral and bilateral engagements of other kinds also remained problematic, due to historical donor policies and sanctions towards Myanmar that sought to prevent funding reaching the hands of people connected to the military regime (Ware 2012b) and because of lingering by government officials of foreign actors' motives and interests (Ware 2012b see also, interviewee #14, 13 December 2014). The operations of the UNDP exemplify the complexities of engagement in Myanmar. While the UNDP had been present in Myanmar for more than three decades working on livelihoods (i.e., food, water, shelter, clothing) and related fields, due to the sanctions regime they were hindered from working on subjects considered too political (Pedersen 2008). Thus, it took the UNDP almost a year of negotiations after political transition in 2011 before they were able to expand their country programme to include topics like 'justice'. The change was significant with regard to UN policy for Myanmar, especially since it meant working more closely with the government, which required approval from the highest UN director level (Interviewee #9, 23 May 2014; interviewee #35, 19 November 2014).[138]

[138] Pedersen (2008, 45) provides an overview of the reasons for Western governments' limited funding to humanitarian assistance for UN agencies and INGO's during military rule in Myanmar. For example, he finds that after pressure from Western governments the UNDP Governing Council imposed an

Different rule of law donors were situated differently in relation to Myanmar. One element shaping their profiles after 2011 was their historical links to the country. Thus, while countries such as Finland and Australia made rule of law development a stated priority of their aid programmes, (Foreign Economic Relations Department and the Development Partners Working Committee), it was the U.K. (DFID), Japan (JICA), the United States (USAID), and the European Union that emerged as the most visible bilateral rule of law donors to Myanmar. Three of these major donors had intrusive historical engagements with Myanmar: the U.K. as a colonial power,[139] Japan as an occupying force,[140] and the U.S. as the main enforcer of a rigid sanctions regime (Pedersen 2008).

'extraordinary mandate' that restricted UNDP Myanmar's activities to areas where government interaction could be limited. Also, as Myanmar was added to the U.S. Congress list of 'outlaw states,' U.S. funding for UN would be reduced if programmes were conducted in Myanmar. As an example, Pedersen argues, that the 2006 Foreign Operations Act, which targeted both the UNDP and UNODC, came to function as a regulatory tool for the US Congress to get international organisations in line with their sanctions policy (2008, 33). As a consequence UN programmes in Myanmar were 'carefully scrutinized by Washington' which forced the organisation and its practitioners 'to balance their responsibility to the people of Burma against the risk of upsetting the U.S. government' (2008, 45). Thus working on anything related to Myanmar was problematic, not only because of the authoritarian rule exercised by the country's domestic leaders but also because of the authority exercised by the United States.

[139] Commercial competition and diplomatic tensions between Britain and France in the nineteenth century, followed by three Anglo-Burma wars, resulted in British appropriation of the Kingdom of Ava, the southern frontier (Tennasserim) and Arakan (Thant Myint-U 2004). These territories came to form 'Burma' (divided into Burma Proper and the Frontier Areas but ruled under one British power (1989a)), a colonial design which fixed the assembled territory as a political and geographical entity on the world map (Thant Myint-U 2004). The British helped justify their take-over by describing the conquered territory as a political state with totalitarian royal rule and little social organisation. According to Thant Myint-U, 'this image of a corrupt king ruling over a mismanaged but otherwise attractive and egalitarian Burmese society fitted well with British attempts to justify the imposition of direct rule' (Thant Myint-U 2004, 6). In the early years, Burma was governed under the rules and regulations of India as the government had no legislative powers (Taylor 2009a). First in 1872 a Judicial Commissioner was appointed to Burma (Furnivall 1948) and in 1897 a Legislative Council was set up in (then) capital, 'Rangoon' to provide advice to the Lieutenant Governor in the drafting of Burma related legislation (Taylor 2009a). Callahan points out that '[t]he British never *built* a colonial state in Burma; they merely packed up some components of administration in India and shipped them to the new territory' (Callahan 2004, 23). Thus, as an appendage to India, Burma was never a priority for British imperial policy and state building but used rather as a means to achieve economic benefits (ibid).

[140] British rule over Burma was brought to an end during World War II when the country turned into a battle field between Allied and Japanese forces which ultimately led to Japanese Invasion (Silverstein 1977). In late 1941, Japanese troops managed to drive out British-Indian troops from Burma, resulting in what Callahan describes as the 'collapse of the colonial state' (Callahan 2004, 47-48). For some, the Japanese were seen as colonial liberators (Taylor 2009, 220). However, increased take over by the Japanese crushed dreams of independence (Callahan 2004) as regulatory and administrative reforms introduced harsh rule. British-Indian armed forces were removed from Burma and civil servants were replaced with Japanese army officials and civilians or loyal Burmese politicians and officials (Taylor 2009, 223). The Japanese took over economic enterprises, transports and communications while the Burmese

By 2015, several multilateral organisations, bilateral donors, private actors, and international non-governmental organisations worked on rule of law assistance in Myanmar. As an example, the United Nations Development Programme's monthly rule of law coordination meetings with local and international organisations that worked on rule of law related issues (as defined by the organisations themselves) in Yangon is illustrative.[141] International members were in a significant majority, a few local NGOs participated, while no national (i.e., Myanmar government) actors were present at the meetings.[142.]

Who was included in the rule of law coordination meetings in 2014 and 2015 is illustrated by the table below.[143] The table is interesting because it shows the plethora of foreign actors who self-identified as working on rule of law in Myanmar.

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authorities remained control over revenue collection and law, order and justice institutions (Taylor 2009a), a slight shift from Japan's usual strategies of setting up public and legal administrations in their colonies, in which they had become experienced (Myers and Peattie 1984, Kublin 1959).The aftermaths of Japanese invasion also resulted in a collapse of the Burmese police force and social control became difficult to maintain (Taylor 2009). In regional areas, the exodus of indigenous bureaucrats, 'stripped the countryside of police [and] jail attendants' and 'the physical evidence of the colonial state (jails, offices, courts, etc.) was torn down by either retreating imperial troops or angry mobs led by BIA [Burma Independence Army] units' (Callahan 2004, 47). Ultimately, the Japanese army and military police, the 'Kempetai', one of the most feared organisations of the time, became the most effective and brutal force to establish control (Taylor 2009, 252) as had been common in other settings of Japanese dominion (Lamont-Brown 1998).

[141] Except for general updates on what the members were doing, meeting topics could include discussions about the 'need to coordinate better on how to communicate 'core' rule of law concepts and terminology' (monthly RoL coordination meeting protocol, 16 December 2014, on file with the author).

[142] While national and local actors, although invited, were often absent from the coordination meetings, they were sought as counterparts to rule of law assistance. They included government actors such as the Union Attorney General's Office (UAGO), the Supreme Court (SC), the Myanmar Police Force, the Parliamentary Committee on Rule of Law and Tranquility, the Myanmar Parliament and Myanmar Courts. Local NGOs often included Loka Ahlinn, Myanmar Legal Aid Network, Myanmar Legal Clinic and Justice for All. I introduce these counterparts in more detail below.

[143] During the course of my field work, new international development actors would frequently arrive in Myanmar, for example, to initiate training activities (e.g., Avocats Sans Frontières, personal observation), set up an office (e.g., Justice Trust and USIP, personal observation) or to assess what they could do within the rule of law assistance field (e.g., East-West Center, personal observation). The list from 2014-2015 is still indicative of who the main rule of law assistance actors were in Myanmar in 2017. Also, while the list of foreign actors is rather extensive, during my field work it did not appear as if all of them actually worked on rule of law assistance in Myanmar.

UNDP Rule of Law Coordination Meeting Members in Myanmar (2014-2015)

Multilateral Organisations	United Nations Office for Drugs and Crime (UNODC) United Nations High Commissioner for Refugees (UNHCR) United Nations Children's Fund (UNICEF) International Labour Organisation (ILO) International Development Law Organisation (IDLO) (Intergovernmental)
Bilateral Donors	British Council (BC) European Union (EU) United States Agency for International Development (USAID) United States Institute of Peace (USIP)
International Non-Governmental Organisations	Namati International Bar Association's Human Rights Institute (IBAHRI) Action Aid Justice Base International Senior Lawyers Project (ISLP) Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE) Central and East European Law Initiative Institute (CEELI) International Centre for Transitional Justice (ICTJ) International Commission of Jurists (ICJ) Justice Trust Mercy Corps Public International Law and Policy Group (PILPG) Friedrich Naumann Foundation (FNF) Centre for Humanitarian Dialogue (HD) Advocates Enfrontier
Local NGOs	Justice for All Loka Ahlinn

The overview of the participants in the UNDP coordination meetings and the data presented in this section (interview responses, project documents, and publicly available information about Myanmar local actors) indicate that a multiplicity of parties constituted the rule of law assistance field in Myanmar. They included the usual proponents of international development assistance, such as bilateral donors and international non-governmental organisations; their counterparts such as national government agencies; and their implementing partners such as private contractors and local organisations. We can think of these actors as 'principals' and 'agents', among

whom several chains of service delivery are established.[144] Rule of law assistance projects not only brought actors together vertically but also horizontally, as foreign donors competed for government collaborations and local access. While they worked alongside each other and asserted that they coordinated their efforts, actors often sought to translate their own particular organisational view of what was needed (or feasible) for rule of law development and in the process became competitors for local counterparts and competent intermediaries. A finding of this thesis is that intermediaries were often the actors who facilitated such interactions between principals and agents, which added another layer of complexity to projects when these were steered in directions that were based on the interests of the individual intermediary. Next, I review such projects in more detail.

5.3. Rule of Law Activities as Intervention

An overview of foreign development actors and their activities suggests several ways in which the rule of law model was translated into practical activities in Myanmar. Development activities were based on some of the rule of law model's most common 'truths' (as I outlined in Chapter 3). Examples of such 'truths' include the idea that legal aid is necessary for access to justice (British Council 2015), that lawyers need good education and an independent bar association (United Nations 1990a), that the judiciary needs to be independent and efficient (United Nations 1985) and that it is important to know what opportunities people have for seeking justice outside the formal court system (van Rooij 2009).

[144] The principal-agent complexity of the development field refers to the theory with origin in economics and political science which suggests how power dynamics may play out when two parties have different interests, incentives and information about something (Gibson et al. 2005, 34, 70). Gibson et al. (2005) suggest that the development industry is plagued by such situations of unequal information which risks a discrepancy in behaviour of the parties.

The branding of the activities that were carried out by foreign development actors in Myanmar resembled those found in other developing- and post-conflict settings (see e.g., Sannerholm et al. 2012). For example, over ten years ago, Bergling (2006) observed that even if settings vary in ideas and identity, the trending activities and modes of implementing rule of law assistance remain largely the same. At a first glance, the same holds true for Myanmar, where, as in many other developing settings, rule of law assistance actors focus on 'needs assessments, expert advice to lawmakers, topical training, study tours, conferences, resident advisors, acquisition of information technology, production of information materials etc.' (Bergling 2006, 196). However, a more detailed examination of rule of law activities in Myanmar illustrates that different forms of translation happen, often through the influence of key intermediaries.[145] So while the packaging remains the same, the actual adaptation of the rule of law model is transformed through local adaptations. Moreover, the introduction of the rule of law model in Myanmar meant that values, perspectives and world views (Interviewee #17, 23 Sep 2014) were brought into contact and created interfaces where competitive and contested ideas and approaches needed careful balancing by rule of law intermediaries who had to mediate these (Interviewees #14; #17; #39; #42; #55) and coordinate the 'two sides' that "need[ed] to understand that they should adjust" (Interviewee #27, 7 October 2014).

5.3.1. Access to Justice, Legal Aid, and Legal Awareness

The enhancement of 'access to justice' is a central component of rule of law development strategies (see e.g., United Nations 2008). Its rationalities are based on the presumption that if people cannot access ways of solving their conflicts (for example,

[145] Such translation is analysed in detail in Chapter 8.

because spaces that provide such services are too distant or unknown to the individual), a rule of law system is not in place (see e.g., Meene and van Rooij 2008).

Access to justice is a common component of the United Nations Development Programme's focus on development and empowerment of the poor. To that end, in 2012, the UNDP initiated activities on access to justice in Myanmar. The 2013-2015 Myanmar Country Programme included a rule of law and access to justice component that sought to build 'the capacities of justice sector institutions and their staff to effectively implement justice sector reform,' enhance 'the legal awareness of vulnerable groups,' and improve 'governance by strengthening the rule of law and access to justice for poor men, women and children' (United Nations Development Programme). However, one UNDP representative was not sure how to match the rule of law model in the local setting: "We aim to bring in a lot of international stuff but it is hard to describe how to bring that in here … how it will fit?" (Interviewee #09, 23 May 2014). In 2013, an access to justice mapping was carried out to better assess needs and priorities for the justice sector and individuals in strengthening the rule of law 'to ensure that future UNDP rule of law and access to justice programming is not only relevant, but also sensitive to diverse local contexts' (United Nations Development Programme 2014, 1).[146] To assess questions of rule of law and access to justice the UNDP thus applied 'research' as technology (discussed in Chapter 3) in support of the rule of law model. One of the practitioners involved stated that the research was carried out in areas where the UNDP managed to gain access through known networks and through

[146] The 'Summary Report of Rule of Law and Access to Justice Mapping' (2014, 1-2) asked state officials about the types of cases and issues they experienced and their institutional challenges for carrying out their work. The mapping also asked ward/village and township levels about the priority of local justice concerns, how people feel that they can address concerns and what their perceived obstacles to accessing justice were. The report found 'that there is a lack of trust that negatively affects the relationship between State and citizens; and, second, that there is a need for greater legal awareness by the public'. It also found that 'Both issues are seen as requiring efforts by the government to encourage the public to obey the law' and that 'The rule of law tends to be viewed synonymously with law and order'. Regardless of that translational confusion of what the 'rule of law' means for the actors involved, the report is confident that 'Officials expressed openness to collaboration with the UNDP in strengthening the rule of law'.

researchers who were 'chosen carefully' to make sure they had knowledge of 'legal terms and concepts' and with the support of "interpreters [who] knew exactly what [the UNDP team] wanted" (Interviewee #7, 21 May 2014).

Also working on access to justice related issues, in 2014 the Myanmar Government and the UNODC signed a 'landmark' collaboration agreement after a year of negotiations that sought to enhance Myanmar citizens' confidence in the justice system 'to provide stability and access to justice' (Mizzima News 19 August 2014 quoting Jeremy Douglas from UNODC).[147]

Promoting 'legal awareness' is another rationale that donors believe will enhance access to justice. DFID (U.K. Department for International Development) was active in promoting legal awareness via their support to the British Council (BC) that implements much of U.K's aid to rule of law assistance projects in Myanmar (Interviewee #20 and #21, 30 Sep 2014).[148] The BC manages the 'Pyoe Pin' programme which was established to serve as 'a credible facilitator and broker that responds to the needs of the people' (British Council). Pyoe Pin operates as a translator of BC's objectives of enhancing legal awareness in Myanmar. One such initiative included the creation of a rule of law-themed television drama (*The Sun, The Moon and The Truth)* to raise awareness of the rule of law and legal rights (British Council , Cassrels December 15, 2015). The soap-opera-

[147] The UNODC had been working on drug control in the Golden Triangle for over 30 years (United Nations Office for Drugs and Crime, for an overview of crime and drug control in the Golden Triangle, see, Broadhurst and Ferrelly 2014). After political transition, UNODC Executive Director, Yury Fedotov, visited Myanmar in 2012, and met with Aung San Suu Kyi to express his organisations' willingness to support rule of law reforms, linking its importance to the establishment of economic and social development (United Nations Office on Drugs and Crime 3 December 2012). After further negotiations with government counterparts, it was reported that UNODC would support the efforts to transform the Myanmar police force in line with international standards and principles (Mizzima News 17 Sep 2013). When I met the UNODC Police Adviser at that time, he was excited over his move to police HQ in Nay Pyi Taw where he was the only foreigner and would be given a driver and police car and 'work with the police to write a road map for the future, to reflect their move to a democratic system of governance' (Interviewee #01, 6 May 2014).

[148] The BC has been present in Myanmar for decades and has had engagements across the country since 2000 through initiatives like the library network 'Millenium Centres' where English and 'much more than English' was being taught (Interviewee #20, 30 Sep 2014). The BC started their capacity building projects in 2005-2006, some of them in support of rule of law, including the set-up and support of local rule of law organisations (ibid).

style drama portrays a young female lawyer who works for a 'legal clinic' in rural Myanmar where she helps people that have been treated unjustly (personal observation).

The EU has been present in Myanmar since the early 90s (with a bilateral aid programme active since 2004). In 2008, the European instrument for human rights and democracy was introduced; however, for the Myanmar context the name was changed to the 'good governance country-based support scheme' because "Otherwise - if keeping human rights etc. in the name - the government would know about it too easily and people would get jailed" (Interviewee #32, 30 November 2014, see Ware 2012, 329 for an overview of similar INGO strategies to not put local actors at risk). Engagement with the government did not start until 2010 and still in 2014 much support was channelled through international organisations in support of civil society and human rights (Interviewee #32, 30 November 2014). A foreign EU representative suggested that "Many international and local organisations applied for funding in partnership - still local people did not understand what this big EU thing was" (Interviewee #32, 30 November 2014). Other donors provided similar opportunities for local organisations to apply for funding. However, the intermediaries who worked for those donors suggested that local organisations lacked an understanding of the application and reporting process, and therefore refrained from seeking funds. Some who had gone through the process said that they would never do so again (Interviewee #27, 7 October 2014). Intermediaries mentioned that a main issue that arose in relation to such funding applications was donors' focus on 'money matters' and reported that they had to 'mediate' issues pertaining to 'money' because 'the Burmese mentality' was different from foreigners' (Interviewee #17, 23 September 2014):

> The Burmese mentality is a bit different from other countries. They don't care much about money so if they don't like something they won't work even if it pays well and vice versa if they like the work and work with friends they could work without money. Some people are getting a bit tired of donors, especially the ones pushing their own agenda. It is mainly the donor's focus on money and monetary compensation that bothers people,

> as Myanmar people generally care very little about money. (Interviewee #17, 23 September 2014)

This is one of the issues raised by local participants in relation to what they perceived as the conflicting motivations of themselves and their foreign counterparts with regard to engaging in rule of law development work. It is a matter of debate, of course, whether there is such a thing as a single 'Burmese mentality' which encourages people to stay away from 'money matters' in a setting known for its ethnic diversity and endemic corruption. Factors that complicate such speculation include the decades of 'socialist' influenced politics as introduced by Ne Win and the common contemporary references to intermediaries being in the rule of law assistance field "for the money" (e.g., Interviewee #3, 8 May 2014). It may also be that these local interviewees wanted to demarcate a normative 'Burmese' order as an expression of 'strategic essentialism' (Spivak 2007) to signal a shared culture, belief or representation that differed from what was brought in by foreigners (see also interviewee #27, 7 October 2014).

One example of EU support was expressed through the funding of a €20 million 'MyJustice' programme, implemented by the BC and local organisation 'Loka Ahlinn', the latter described as not a 'typical' rule of law organisation for the EU to support because the organisation's members consisted mainly of artists and 'wishy washy' people (Interviewee #20, 30 Sep 2014). Loka Ahlinn was founded in 2006 to prepare community groups for future national development through capacity building and networking. The organisation assisted with emergency and relief activities in the aftermath of the 2008 cyclone Nargis and partnered with UNDP and other international organisations in 2009 to work on agriculture and livelihood recovery activities and community development trainings (Amatae). After 2012, Loka Ahlinn worked variously with 'Community Development,' 'Civic and Political Engagement,' and 'Governance and Accountability Promotion.' They implemented 'Farmer Field School,' 'Rule of Law

Promotion,' Youth Empowerment' and civil society organizations strengthening projects. They raised awareness of legislation and provided training on rule of law and judicial system reform (Amatae). Loka Ahlinn also ran an earlier BC-funded 'Capacity Building for Rule of Law Promotion' project in Myanmar (Namati: Innovations in Legal Empowerment, n.d.).[149] One foreign lawyer complained that Lokal Ahlinn "do any project they get money for, they are not a well-known rule of law organization, they don't know rule of law" (field notes, December 5, 2014).

Loka Ahlinn describe themselves as a 'right-based [sic] social development organization which are strengthening the actors of both individuals and institutional [sic] for civil society movement through rule of law and human right-based [sic] democracy' (Namati: Innovations in Legal Empowerment). I managed to get some sense of Loka Ahlinn's understanding of 'rule of law' after a lengthy conversation with one of the organisations' founders (Interviewee #30, 24 October 2014). During the first thirty minutes of our conversation I asked questions that related to their 'rule of law' work but I was repeatedly met with a conversation about 'democracy' (see also Cheesman 2014). I was perplexed until finally we arrived at a discussion about 'accountability' which was a more familiar topic to me that could be linked to rule of law.

The MyJustice Programme that Loka Ahlinn implements aims to improve access to justice, through legal aid, community mediation and paralegal services, especially for the poor, vulnerable and marginalised (British Council 2015). Through the Programme, legal aid centres were established across the country (British Council 2015). A legal aid model that had been elevated from South Africa's experiences to a global level, promoted by the UN, was introduced by foreign actors in Myanmar (2013). The

[149] In Chapter 6 I further explore how organisations like Loka Ahlinn reinvent themselves to work on rule of law development after political transition.

rationale that legal aid is a necessary component for access to justice had thus travelled to Myanmar where it was identified that a legal aid system was lacking. On that theme, in addition to setting up legal aid centres, a legal aid bill was passed in Parliament and foreign legal aid advisers were embedded with local organisations (Interviewee #40, 9 Dec 2014). Also, a Myanmar Legal Aid Network (MLAW) that consisted of law firms and civil society organisations was established (Interviewee #46, 9 December 2014). Like Loka Ahlinn, MLAW faced significant demand from foreign development actors and came to occupy a central position (see also de Sardan 2005, 167) as an intermediary to foreign organisations.

The translation of a legal aid system in Myanmar did not, however, come without friction, as foreign, national, and local actors tried to align their different understandings and knowledge. This was exemplified by one of my interviewees (an American lawyer) who recounted some of the issues that had emerged in her work. The foreign lawyer had been discussing legal aid with the local lawyers with whom she was working and recalled her thoughts during one of those discussions:

> Sometimes I think that we are on the same page and then I hear something so very surprising. For example, they told me about the challenges for local lawyers working with legal aid - they have been insulted and under attack for providing free services. Then someone raised the question whether it is possible that we are supporting higher levels of crime because we provide free legal advice. Could this really be a legit concern people have? (Interviewee #53, 5 October, 2015)

The example illustrates that an imported model that advocates for an accessible legal aid system did not translate smoothly to the Myanmar setting, neither semantically, nor ideologically, as reflected in the concern by the local lawyer (see also Interviewee #58, 30 September 2014).

5.3.2. Key National Rule of Law Institutions

Multilateral and bilateral donors approached the Myanmar government as counterparts to rule of law assistance. The Supreme Court of the Union and the Union Attorney General's Office in Nay Pyi Taw were especially targeted as central law and justice institutions. Institutional constraints of these government actors were mentioned, for example, in New Perimeter's Rule of Law Assessment (2013, 18) that portrayed the Union Attorney General's Office as having a strong leadership that appreciated international cooperation and support, but that was overburdened and had few lawyers with knowledge of legislative drafting, international law and 'basic skills, tools to do their jobs, and capacity to absorb outside help'. The judiciary was described as in need of a 'shift' of 'culture' because judges 'are expected to adhere to the rule of law and explain in written rulings the reasoning for their decisions' (New Perimeter 2013, 31). Training programmes run by international agencies were suggested as 'highly valuable' for effecting such a 'culture' shift (ibid).

While it seemed as if the Myanmar government was active in their rule of law reforms attempts, foreign practitioners mentioned the low capacity among government counterparts and the tiresome processes and negotiations they had to go through to reach agreements on reform (e.g., Interviewee #9, 23 May 2014). In practice, intermediaries variously suggested that they had to 'mediate' or 'be the go between' because 'foreigners' did not understand the limitations such constraints had on proposed and implemented rule of law activities (e.g.,, interviewee #17, 23 Sep 2014). One intermediary complained about 'the ones from DC' who:

> Want to completely skip the local and do their own thing, I try to convince them of how they cannot do that as the problems they will encounter are not what they can predict from the outset, they will come to a point where there is a stop. When they don't want to listen to me I tell them 'good luck.' (Interviewee #10, 12 May 2014)

Another intermediary suggested that 'international staff' did not understand that 'a lot of flexibility' was needed 'to work with the government in a place like this' and that therefore "You might have to bend the rules a little bit" (Interviewee #6, 19 May 2014). In effect, government intermediaries were also central for managing the different expectations held by foreign actors and government counterparts (Interviewee #6, 19 May 2014; Interviewee #7, 21 May 2014).

While foreign practitioners did not experience rule of law as a priority reform area for the Myanmar government (e.g., Interviewee #7, 21 May 2014) collaborations with international actors were established. To get closer to government counterparts, in 2013, a UNDP position of chief technical advisor on rule of law and access to justice to be located within the Attorney General's Office in Nay Pyi Taw was advertised (UNDP Jobs 2013, on file with the author). The chief technical advisor was to provide assistance with 'institutional capacities for participatory coordinated planning and policy making' for the Office of the Supreme Court of the Union, the Ministry of Home Affairs, Police services and justice sector parliamentary committees (United Nations Development Programme). UNDP's initial initiatives on rule of law reform were thus mainly framed as developing national counterparts' planning capacity (see also interviewee #35, 19 November 2014) which is interesting in light of the suggestion by a UNDP programme officer that: "It is still very sensitive what we are doing here on the rule of law" (interviewee #31, 10 November 2014).

Like the UNDP, JICA positioned rule of law advisers within the offices of the UNAGO and Supreme Court in Nay Pyi Taw (Interviewee #39, 22 November 2014). JICA worked with a similar capacity building focus as the UNDP but there was little cooperation between the two organisations on a daily basis (Interviewee #35, 19 November 2014). According to one interviewee, JICA's involvement in rule of law assistance had a strong focus on law and economic development which was "quite

different from other places" because it was "much more focused on business interests and in quick solutions for the business community" (Interviewee #39, 22 November 2014), which the practitioner questioned. Regardless of the impact and room for maneuver that the placement of foreign advisers within key justice institutions could possibly have, the fact that the Myanmar Government agreed to such placements indicates noteworthy change in a country that to large extent remained off limits to foreigners for decades.[150]

UNDP's strategy to focus on 'planning' did result in the first ever Judiciary Strategic Plan ('Advancing Justice Together' for the years 2015-2017) to improve the Myanmar justice system and services of the courts (The Supreme Court of the Union of Myanmar 2014).[151] The plan was drafted with support from USAID and JICA and its five focus areas: 'Protect Public Access;' 'Promote Public Awareness;' 'Enhance Judicial Independence and Accountability;' 'Ensure Equality, Fairness, and Integrity of the Judiciary;' and 'Strengthen Efficiency and Timeliness of Case Processing,' translate some donors' priorities: enhanced case processing (USAID), and Access to Justice and legal awareness (UNDP). A review of the plan's first year suggested that reforms that had been implemented included the identification of pilot courts where public information centres had been set up, modern equipment provided, the judiciary trained, and case management procedures implemented. At the Supreme Court of the Union, electronic case information systems had been developed and several new departments been established. Progress had also allegedly been made to enhance the public's and media's access to information about the court and its services (The Supreme Court of

[150] The government also accepted the placement of a senior UNODC Police adviser in the capital (Interviewee #01, 6 May 2014).
[151] For the Union Attorney General's Office (UAGO) reform was allegedly slow (interviewee (Interviewee #35, 19 November 2014). However, they also launched a first strategic plan as a result of the collaboration with UNDP (Union Attorney General's Office 2015).

the Union of Myanmar 2016).[152] It might be that in 2016, the effects of the tiresome processes the practitioners I interviewed in 2014 and 2015 had to go through finally bore fruit, or we might see another case of an authoritarian regime that continued to make public commitments to the rule of law while disregarding or abusing central principles of the concept in practice (Ginsburg and Moustafa 2008). Also, while government reforms looked good 'on paper' their significance for rule of law 'in practice' and especially people's increased confidence in the justice system as an effect of the reforms remained unexplored.

USAID approached national courts to support the setup of electronic court filing systems (United States Agency for International Development 2016b).[153] While USAID is presented as a main rule of law donor in Myanmar, USAID's Inaugural Rule of Law Project in Myanmar (United States Agency for International Development 2016a) is implemented through consultancy firm Tetra Tech (Tetra Tech). In August 2013, Tetra Tech sought candidates for 'Justice Sector Positions in Myanmar' with significant experience in one of the listed areas of expertise[154] for various long-term positions for the USAID-funded 'Promoting the Rule of Law Project in Burma' (on file with the author). In November 2013 a 'Myanmar Legal Specialist' was sought after to carry out several tasks including, travelling to various regions, and to carry out activities in cooperation with the Government and advise on legal themes (on file with the author). The fact that a search was made for someone who could travel 'to various

[152] Especially the relationship between the courts and media seem to have been prioritized and some of the journalists I met in Yangon during my field-work had been involved in various media trainings for court staff.

[153] USAID re-established their mission in Myanmar in 2012. While more recent humanitarian assistance had been provided by the agency since 2000, the last time the USAID had any presence in the country was in 1988. One of the expressed aims of the development assistance delivered by the U.S. to the country is to lend support to the initiated economic and democratic reforms undertaken in favour of rule of law, human rights, and good governance that take into account the diversity of Burma and its civil society (Cartwright and Truong 5 September 2012, Bureau of East Asian and Pacific Affairs 13 August 2013).

[154] Including: Judicial governance; Judicial training; Access to justice; Legal aid and legal education; Implementing; legal frameworks; Legislative drafting; Grant management; Communications/campaign development; Gender mainstreaming and law; Strengthening civil society; Monitoring and evaluation; Finance/administration/human resources.

regions' echoes my previous suggestion (in Chapter 4) that intermediaries often travelled with the rule of law model across Myanmar due to the sometimes cultural and physical travel restrictions on foreigners.

Trainings that involve international legal concepts are common for promoting the rule of law model (as outlined in Chapter 3). The Myanmar government also accepted international support through the various trainings and workshops organized for government staff in Nay Pyi Taw. For example, in 2014, the International Commission of Jurists convened a seminar on 'The Role of Judicial Independence and Integrity in Improving the Effectiveness of the Rule of Law' for the Office of the Supreme Court of the Union (International Commission of Jurists 11 February 2014). The UNDP arranged trainings on constitutionalism, law making, and substantive skills for UAGO and the Office of the Supreme Court of the Union' (United Nations Development Programme). On 6 February 2017 a workshop on Intellectual Property was co-organized by the Office of the Union Supreme Court and JICA (The Supreme Court of the Union of Myanmar 6 February 2017).

Moving from strategies to keep aid money away from the previous military government to those of engaging the government was not always seen in a positive light. For example, local actors who also worked with foreign organisations suggested that foreign development organisations lacked sufficient knowledge of the local setting and significant power relations as they pushed their own agenda. A representative from a local organisation suggested that foreign donors' increased engagement with the government constituted 'a moral crisis' for him:

> Donors are driving their agenda increasingly. It is a big damage for civil society and the democracy movement in our country. For example, they want us to engage direct with the government … but morally … we want to base our work on our moral ground. When working with the [foreign donor] I have to report my meetings to them, this gives some sort of score, high level people matters more and gives a higher score, so I always have to mention the very important people we meet and I have to invite them to trainings. Before 2010 we should not talk to them [the government] but then yes. Historically we are a country of social movement but after 2010 foreign donors engaged

> directly with the government, social movements became marginalized, many organisations changed their strategy now and there are very few social movements now. (Interviewee #30, 24 October 2014)

A foreign practitioner concurred as he suggested that "There is talk among the national staff that their international supervisors don't understand sensitivities in the country. For example, they force them to go to the library and make copies which mean that they are being registered" (Interviewee #02, 7 May 2014):

> Local staff still feel unsafe- they refuse to go to certain areas and work on certain issues. The special branch is still here. If you met with officials they will follow you. They will take Myanmar citizens aside and question them and ask why they were with a foreigner, what the mission is about etc. National staff don't even want to call ministers-perhaps its paranoia.

Both of the suggestions raise important questions in relation to donor engagement in host countries which should be sensitive to the context and strive for ensuring local ownership without putting local participants at risk (Ware 2012a).

5.3.3. The Legal Profession and Legal Education

When foreign development actors arrived in Myanmar they identified educational and institutional constraints pertaining to the legal profession that resulted in a lack of lawyer independence, government practice of revoking licences to practice, and infringements on lawyers' rights to freedom of association (International Commission of Jurists 2013).

As a result, lawyer-to-lawyer collaborations were sought that included development projects aimed at strengthening the capacity of the legal profession. For example, in January 2014 the International Commission of Jurists (ICJ) announced the opening of a new Yangon office (via the Myanmar Law Google Group) with an International Legal Adviser for Myanmar. The ICJ voiced critique against the current

state of legal and judicial affairs, especially in relation to the legal profession (International Commission of Jurists 2013, Aguirre and Sathisan 27 January 2016).

Another configuration of lawyers, the International Bar Association's Human Rights Institute (IBAHRI)[155] established a presence in Myanmar after undertaking a fact-finding mission to Myanmar in August 2012 'to understand Myanmar's prospects and needs at this important juncture and, more specifically, to find out how far it has begun to adhere to globally prevalent understandings of the rule of law' (2012, 6). Following the initial assessment, in November 2013, an International Legal Specialist 'with the necessary skills to function effectively as the national representative body for lawyers, to promote the rule of law and law reform and to act as a counter-balance to the state' to work on a development project to 'establish a professional, independent and active bar association in Myanmar (Burma)' was recruited (on file with the author).

Since then, IBAHRI has been active in supporting the establishment of an independent Lawyers' Association. For IBAHRI the rule of law was thus translated into a need for a Lawyers' Association, which is the focus organisation it specialises in assisting. To that end, on February 13-15, 2014, a seminar was held on 'Bar Associations' Best Practices: An International and Regional Approach' (Workshop Report, on file with the author). On 28-30 October 2014 a workshop discussed 'Laws Regulating the Legal Profession: A Comparative Review from Around the World' (International Bar Association's Human Rights Institute 2014). To raise awareness of the initiative and mobilise support for the establishment of a national bar association, representatives from IBAHRI travelled across Myanmar to meet with local lawyers during 2014 and 2015 (personal observation). As a result of that work, in January 2016,

[155] IBAHRI is a well-known rule of law actor that 'works to promote and protect human rights under a just rule of law', through support to activities that relate to the independence of the judiciary and the legal profession, the gathering and spreading of information on human rights issues, as well as capacity building to foster practical implementation of such issues (International Bar Association's Human Rights Institute).

after state elections, the Independent Lawyers' Association of Myanmar (ILAM), supported by the Parliamentary Committee on Rule of Law and Tranquility, was launched as it held its inaugural meeting in Nay Pyi Taw.

While a national bar association seemed much needed, the introduced model for a lawyers' association was sometimes questioned. For example, one local lawyer noted that, for people in Myanmar, aspects other than 'democracy' (for example seniority) were considered more suitable for deciding who should become a member of the national bar (Interviewee #14, 5 October 2014). Another issue that came to light through IBAHRI's work in Myanmar was the sometimes dominant approach carried out by foreign actors to promote their particular model. The work on establishing a national bar association was criticised for sidelining existing local initiatives. A foreign lawyer explains:

> They often use their name and then take over … they call it the 'IBA initiative to start a national bar association.' I played the key role, it is not their initiative, I see how they brag about it on their web page and in their newsletters, they want it to be their initiative. They flew in a lot of people who knew nothing about the country or about MLA [Myanmar Lawyer's Association], which is a local initiative that was just starting. I asked people (local lawyers) if they knew about it and if they think it is a good start … about 20 out of 200 attendants said yes and I told the IBA who replied that is it a government biased initiative. I said 'do you know guys, there is already a Myanmar Lawyers Association?' None of the internationals knew about it, IBA said it is no good. I think the IBA wanted to be the 'steerer' of that, they want to brag about it. It was a horrible meeting for me. Some say that MLA is too Yangon-focused but they had advertised the meeting in the newspaper, maybe it was not broad enough but they tried. On the second day at lunch time, I sat down with some guys and told them: 'you should speak with the MLA, they probably didn't want to exclude you'. I got them all talking with each other, they were shouting at each other, [local staff] was helping me to turn it to a more positive discussion. MLA is founded by local lawyers. IBA wants to do it. This is not consistent with international best practice, you need to let the locals do it. (Interviewee #41, 11 December 2014)

This quotation captures major issues of the development field, including that of genuinely respecting local ownership (Bosch 2016) and engaging in settings without sufficient knowledge of local power relations. An example of the latter was observed by Dunlap (2014) in Cambodia where, she argues, because of the lack of well-grounded insights, IBA's rule of law assistance efforts helped support corrupt and elite

government interests instead of contributing to rule of law development. In the Myanmar case, foreign actors mentioned the 'un-democratic' aspects of the existing Myanmar Lawyer's Association (MLA) as an explanation for sidelining an existing local initiative; an often re-told story among foreign rule of law practitioners in 2014 concerned an impromptu break-out meeting that was convened by several senior local lawyers during an IBA conference. According to the story, members of MLA felt that there was no need to establish a new association when they had already achieved temporary registration and were working towards being a representative, national, bar association. However, other lawyers expressed the view that MLA had excluded many lawyers from around Myanmar and that it was unfairly focused on lawyers who were mainly from Yangon. There were also questions raised about the group's political affiliations (e.g., Interviewee #8, 22 May 2014; interviewee #14, 5 October 2014).

To work towards development of the legal profession, major donors also funded legal education. In 2013, for the first time in almost two decades,[156] undergraduate degrees (including law) began anew at the University of Yangon and Mandalay University (Crouch 18 September 2013, Ei Thae Thae Naing 4 August 2013).

[156] In line with Ne Win's judicial changes the legal education came to be transformed with Maung Maung (Chief Justice, President and Chairman) at the forefront (Huxley 1998). University education was particularly targeted as student protests were common. After the 1962 military coup and following student protests universities were closed for long periods of time, some only to re-open in 2013. The general school system in Myanmar deteriorated during BSPP rule, as international contacts were cut off, and substantial content was exchanged to political indoctrination (Steinberg 2001). For example, legal scholar Myint Zan suggests that his education in Yangon during the time of Ne Win had been full of inaccuracies, which 'reflected the propagandistic nature in which the subject was presented and displayed either total ignorance or willful distortion' as 'socialist ideology had been imposed on the law curriculum' (Myint Zan 2008, 71, 74). Another factor that affected legal education was the changing of the language of instruction from English to Burmese. In 1976 as universities were re-opened (they had been shut down after protests in 1974 and 1975 when student protests came to an end with the use of military force (Taylor 2009a). Correspondence courses in law were introduced and a huge increase in students was enabled. Myint Zan argues that the government under Ne Win intentionally lowered the standards of legal education and tried to keep students away from campuses (thus serving political and security purposes of stability and control) through the introduction of such distance education . He also suggests that the system of distance education, including aspects such as the use of extremely generalised questions, requiring not more than copying of the course material and the high amount of students (50 000 enrolled in 2005), and consequently little time for serious marking, created a mass production of law graduates who easily obtained high marks by overburdened staff .

The rationale for providing legal education as development (for its common uses, see Taylor 2010a) easily translated to the Myanmar setting where legal education for decades deteriorated in the face of hostile political strategies, thus leaving it in a poor state and unable to produce well-educated lawyers (Myint Zan 2000). The education sector was also a relatively smooth counterpart for development assistance because it is easy to articulate why a good education system is important for development. Two local programme assistants explained that their work within the legal education system was successful because they refrained from "touch[ing] sensitive parts – the larger goal is of course justice for all … we can't touch sensitive stuff, we would not be as successful then" (Interviewee #60 and #61, 3 December 2014). However, because the education sector – and Yangon University in particular -- became a counterpart in demand (Esson and Wang 2016), it became overburdened with development initiatives that focused on strengthening legal education in mainly urban areas.

UNDP prioritised work in support of universities (Interviewee #60 and #61, 3 December 2014). Bridges Across Borders Southeast Asia Clinical Legal Education (BABSEA CLE) worked with universities on 'Clinical Legal Education,' which originates from the United States, 'as part of an explicit social justice agenda and primarily in response to a lack of legal services for the poor' (Bridges Across Borders Southeast Asia Clinical Legal Education , Owen 2011). The organisation described clinical legal education as 'a progressive educational ideology and pedagogy that is most often implemented through university programmes. Clinics are interactive, hands-on classrooms that promote learning by doing' (Bridges Across Borders Southeast Asia Clinical Legal Education). Pro bono lawyers from America, Australia, Vietnam and other countries contributed to the clinical legal education (personal observation; Interviewee #60 and #61, 3 December 2014).

The global, mainly corporate, law firm DLA Piper[157] also contributed to clinical legal education. In March 2013, DLA Piper's pro bono legal assistance organisation for developing and post-conflict settings, New Perimeter, stated in the 'Myanmar Rule of Law Assessment' that the organisation would contribute to law reform in Myanmar by contributing with 'thousands of pro bono hours from the law firm' (2013, 2).[158] In 2013 DLA Piper provided trainings by American lawyers to enhance clinical legal education, together with BABSEA CLE. The initiative was also supported by the UNDP as a key dimension of strengthening rule of law and access to Justice in Myanmar (DLA Piper 2013).

In 2013 JICA and Nagoya University funded a Myanmar-Japan Legal Research Centre at the University of Yangon to enhance research capacities and to provide teaching. The Centre 'aims to carry out legal assistance in Myanmar, which is facing an urgent need for human resource development of judicial officers in its rapid progress toward democracy and a market economy' and 'disseminates research and legal information of both countries' (Nagoya University 2013). Japanese academics lectured on topics including 'the legal essence of Myanmar law and common aspects of Myanmar and Japanese law' and carried out research on Myanmar's legal system to 'help facilitate processes in a historical moment when many laws are amended' (Interviewee #51 and #52, 12 December 2014). An involvement in legal education illustrates Japan's role as an emerging 'soft power' donor also within the realms of democracy, human rights, and rule of law (Ichihara 2017).

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[157] 'DLA Piper is the largest law firm in the world (in term of number of lawyers). The firm does not have an office in Myanmar but a Myanmar-Cambodia-Laos Desk in the Bangkok office. The desk is staffed by a team of international lawyers from Bangkok and Singapore (e-mail interview, 12 February 2017, corporate lawyer).

[158] Pro-bono service of law firms in Myanmar often translate to good will and an opportunity to network with government officials or potential employees. Some firms run seminars for government officials and law students and some help government officials with law and regulatory reform. For example, DLA Piper provided funding to NGOs to conduct a rule of law assessment in Myanmar seemingly as a part of its global pro-bono account which main purpose is to increase the share of pro-bono account relative to profits (this has an impact on ranking of law firms in the US) and to show that they are global firms with global pro-bono projects, see, (Tungnirun 2017).

In addition to their support to university education, the UNDP worked to enhance education for already graduated legal professionals through collaboration with the Parliamentary Committee on Rule of Law and Tranquillity. Based on an idea prepared by the Parliamentary Committee in 2013 (San Pe 2014) and a UNDP feasibility study that included comparative examples and consultations with stakeholders in Myanmar (United Nations Development Programme March 2014)[159] the constellation set up 'Rule of Law Centres' across the country including Mandalay, Lashio, and Yangon.[160] The set-up of the centres meant that the UNDP moved from their less sensitive planning activities to actual implementation of rule of law reform. For the Rule of Law Committee (and especially Aung San Suu Kyi) the establishment of the centres helped illustrate some tangible results of rule of law development (conversation with foreign diplomats, field notes, 30 September, 2014).

The rapid implementation of Rule of Law Centres was, however, debated. A foreign rule of law practitioner expressed her surprise over Aung San Suu Kyi's push for the implementation of the centres, because, as the practitioner explained, she was used to the opposite happening, i.e., that foreigners are the ones driving hasty reforms (Interviewee #9, 23 May 2014). A local programme officer who was involved in the project was concerned about the sustainability of the centres because they had been implemented quickly, with little research conducted on the local needs and feasibility (Interviewee #6, 19 May 2014).

[159] A Coordinating Committee chaired by Aung San Suu Kyi including Members of Parliament, the Parliamentary Commission for Assessment of Legal Affairs and Special Issues, and representatives of various government ministries and the judiciary were invited to provide comments on UNDP's recommendations in the study (United Nations Development Programme March 2014).
[160] 'The Rule of Law Centres are supported by the Governments of Finland, Sweden, the United Kingdom, the United States, and other international development partners. They are being run jointly by the United Nations Development Programme (UNDP) and the International Development Law Organization (IDLO) and are an initiative of the Pyithu Hluttaw Coordinating Body for Rule of Law Centres, established under the Rule of Law and Tranquility Committee of the Pyithu Hluttaw' (United Nations Development Programme Myanmar 2016).

The set-up of the rule of law centres was also the subject of various political- and donor struggles. For example, it is noteworthy that the International Development Law Organization (IDLO), also involved in the project, in 2014 announced that a consortium of partners had been established in light of (then) President Then Sein's repeated calls for the strengthening of rule of law, and in 2015 announced that the consortium of partners were linked to the proposal by the Parliamentary Committee (on file with the author). Also interesting is that at its initial launch the centres project was presented as a UNDP and other foreign donor initiative - with no recognition of the Parliamentary Committee (Interviewee #41, 11 Dec 2014). The foreign donors' initially cautious approach to being visibly affiliated with the Committee may have reflected the uncertain political environment many of them felt that they were operating within during that time.

5.4. Conclusion

This chapter presented the field of rule of law assistance as it became established in Myanmar after 2011. I presented an overview of how rule of law became an acceptable topic of discussion for reform purposes and how the increased acceptance led to the arrival of foreign rule of law actors and the initiation of rule of law assistance activities.

While the themes and structure of rule of law promotion were similar to those found in other settings, a more detailed examination of rule of law activities indicates that different forms of translation happened, often through the influence of key intermediaries. So while the packaging remained the same, the actual scope and content of the rule of law model was transformed through local adaptations. I explore such adaptations in more detail in Chapter 8.

Political transition and the initiation of rule of law assistance in Myanmar that followed meant that international, national and local structures were brought into contact in ways unthinkable of during decades of authoritarian rule. In that setting, foreign interventions that sought to introduce the rule of law model in Myanmar contributed to the emergence of local and national rule of law counterparts, as well as interfaces between actors' knowledge, values and diverse understandings of the rule of law concept and the local context. For example, issues were raised by local participants in relation to what they perceived as divergence between their motivations and those of their foreign counterparts for engaging in rule of law development work. Another issue that was raised as pertaining to knowledge of the local setting and power relations was that of complaints that donors were pushing their own agenda. Competitive and contested ideas and approaches needed careful balancing by rule of law intermediaries who had to mediate between, and coordinate, counterparts.

Development intervention happened, not only within, but also besides and below formal channels. As a result, the 'tools' of rule of law assistance took on an 'embodied' form as intermediaries emerged to navigate different norms, values and motivations of international, national, and local structures and actors. Reforms in Myanmar and the resulting development assistance thus reopened or created fields of action for a great number of intermediaries. In the next chapter, I turn to a more in-depth analysis of the emergence of intermediaries in Myanmar.

Chapter 6. The Emergence of Rule of law Intermediaries in Myanmar

The reforms in Myanmar and the resulting development assistance reopened or created fields of action for intermediaries. In response to these new features, certain actors transformed themselves into intermediaries, either by drawing on their own capital to establish themselves as intermediaries, or through their enrolment as part of foreign actors' desperate search for them.

Development anthropologists have previously shown how intermediaries appeared to broker relationships when they gained access to power and economic resources via their linkages to international aid circuits (Bierschenk et al. 2002). The rise of this new type of actors has been overlooked by many studies within the rule of law assistance field.

In this chapter, I explore in detail how intermediaries emerged in response to opportunities that emerged in Myanmar's young rule of law assistance field.[161] I suggest that there were various dynamics that contributed to intermediaries' emergence, as they were both recruited by foreign actors and drew on their own capital as they carved out a space in the rule of law assistance field.

The central questions this chapter addresses are thus, on the one hand: What leads foreign rule of law actors to seek intermediaries? Why do foreign to rule of law actors view intermediaries as important? And, how do foreign rule of law actors find intermediaries? From the intermediaries' perspective I ask, on the other hand, how do intermediaries compete for the rule of law assistance space? And, how does one become an intermediary? These questions are important because they reveal structural aspects of

[161] Outlined in detail in Chapter 5.

development aid as it operates in the rule of law sphere: for example, who gets to be included, who gets to exert influence, and why?

The data presented in this chapter consist of interview responses and personal observation from the field in Myanmar. Findings suggests that in Myanmar, foreign development actors need the assistance of intermediaries to gain access to national and local counterparts, navigate unfamiliar local systems, understand its hidden power struggles and complexities (Elwert and Bierschenk 1988), and reach out to potential counterparts amidst a hectic environment buffeted by sweeping political, social, cultural, and economic changes. The demand for intermediaries also creates significant opportunities for these actors to influence the direction of rule of law assistance.

Foreign development actors do not anoint intermediaries in an indiscriminate way: they are particularly cautious to engage actors too closely connected to the military or who do not share their ideas of what human rights constitute. Thus they look for intermediaries who understood their aims and objectives and who can function as representative 'vehicles of control' (Latour 1987, 108, 115) - that is - actors who believe in the facts foreign donors wish to promote and who are willing to invest in such truths because they speak to their own interests. The control that Latour posits exists in the opportunity to spread rule of law principles through predictable channels, which is what intermediaries provide. As a result of high demand but limited supply of suitable intermediaries (primarily due to lack of language skills and legal education) development actors compete for individuals who possess valued characteristics. To bolster the lack of supply, foreign development actors also support the creation of coalitions and invest in NGOs that could serve as competent intermediaries.

The demand for intermediaries also prompts individuals to re-invent themselves as a result of opportunity or 'discovery' of new openings that enable increased access to power and economic resources. On the government side, too, intermediaries emerge,

less because of 'opportunity' and more because of 'burdens' that must be carried out dutifully. The way that government intermediaries emerge and have come to influence rule of law assistance in Myanmar provides new insights that extend existing conceptions of the role of intermediaries in development assistance.

This chapter begins with a presentation of interview data in which foreign practitioners suggest that intermediaries were involved in the processes of setting up new rule of law assistance activities and that they were considered major enablers in such processes. To understand how and why foreign development actors looked for intermediaries, interview questions included:

- You mentioned [person's/organisation's name], how did you find this person/organisation?
- What made you decide to seek this person?
- Was it difficult to find someone like this?

Foreign respondents suggested that their organisations needed the assistance of intermediaries to connect them to local counterparts, to bridge cultural - and linguistic - gaps, and to provide guidance on political sensitivities.

A presentation follows of the main themes from interviews where I asked local actors why and how they sought out opportunities in the rule of law assistance field. As explained in Chapter 2, I often applied a different set of interview questions to foreign and local rule of law actors on the one hand and the identified intermediaries on the other. I thus asked intermediaries questions that included:

- How did you come to hold your position?
- What did you do before this opportunity came up?
- When did opportunities like these open up?

This chapter concludes that intermediaries have emerged in the rule of law assistance field in Myanmar because foreign development actors need the assistance of individuals

who understood their aims and objectives, to navigate unfamiliar systems, and who could reach out to potential counterparts as intermediaries of the rule of law model.

The tendency of foreign actors to seek individuals with likable personalities who were easy to work with had implications for rule of law assistance because it indicates that foreign actors chose people to work with out of convenience rather than influence. In addition, the tendency of foreign donors to work with the same group of intermediaries who moved between donors and assignments resulted in the perception that a lot of people supported foreign funded initiatives while in fact at the time only a handful of people channelled much of the rule of law assistance to Myanmar.

6.1. A 'New Market': the Need for Intermediaries

In order to understand the demand for intermediaries in Myanmar and thus their emergence it is necessary to review the challenges foreign practitioners experienced when they arrived to promote the rule of law model after 2011.

Foreign practitioners variously suggested that they required the assistance of intermediaries to gain access to, and build relationships with, their intended counterparts (Interviewees #7; #8; #9; #10; #20; #29; #40; #54; #56). A foreign practitioner exclaimed: "Burma is a new market, so how do we do it? It is incredibly difficult to get in" (Interviewee #20, 30 September 2014). What the practitioner was referring to was the general lack of understanding of how, or who, to best support when seeking to develop the rule of law in Myanmar. The comment also touched on technical aspects of doing development and gaining access. His comment was followed by a detailed explanation of the role played by his local staff (and intermediary):

> Leaving him [the intermediary] out as an individual, it is a post he is occupying, it is our link between an international corporate body and engagement with real people with real problems. Few internationals in all these organisations know how to get to these people and how. I would not know who to call the way he does. He comes from that

> background, he has it in his DNA. He has one foot in and one foot out at the same time. A bit schizophrenic and difficult, he is at the interface.

The quote suggests that there was a view that the foreign organization would not have been able to implement rule of law assistance activities without the assistance of the local staff, who were responsible for enabling both access and ideas for how to support rule of law development. Other foreign development practitioners described similar sentiments -- a perceived need for the assistance of intermediaries and the impossibility of performing development work without them:

> It would not be possible to do what I do without these players. It's important for me to go and talk to these people in their context. To understand what happens in states and regions, I don't know how I could have organized it without them. I would be less successful without them. It would have a direct impact on peoples' motivations. (Interviewee #8, 22 May 2014)

There was also a tendency by foreign development actors to look for intermediaries who could help them access the counterparts they sought. For example, one organisation that worked with local courts enrolled a former judge and had been "thinking about hiring someone to 'get to' the Attorney General, for example, a former employee" (Interviewee #25, 3 October 2014). However, realizing the problems that might arise if hiring someone 'just because of their connections' (ibid). The differences in how development actors translated the rule of law and who they sought as counterparts thus influenced the background characteristics of the intermediaries they enrolled.

The overview mirrors a common theme in development studies, that 'outsiders' need the help of 'insiders' who act as 'gatekeepers' to access new settings (Anderson and Olson 2003, Autesserre 2014, Roth 2015). The tendency that outsiders become dependent on the insiders who act as gatekeepers results in their significant 'influence over the direction and conduct of programs' (Anderson and Olson 2003, 41). Such power can result in foreign actors being out of touch 'with important sectors of society'.

Foreign actors' reliance on intermediaries was evident also in Myanmar where intermediaries had the power to select who got to be involved as local counterparts of rule of law assistance. A foreign lawyer and senior legal adviser explained the dilemma she faced when trying to organise development activities:

> He [intermediary] compiled an invitation list for our seminar which was quite controversial. There were issues of hierarchy, who was on the list, who was there and who was not and so on. There was a perception from one or two that he selected groups of those who kind of … that he was biased. The groups and associations for most parts were perceived as not that democratic. I can't say to what extent who it was that selected the people we ended up with. I don't know why he selected these, I don't know the landscape well enough. (Interviewee #8, 22 May 2014)

A bilateral donor concurred, when he complained about losing control over the activities they funded in Myanmar: "In the beginning we had a better overview of what was going on but now there are so many groups etc. Sometimes we don't even know what Pyoe Pin is doing – we do lots of stuff that we hardly know we are doing" (Interviewee #12, 7 May 2014). Another foreign programme manager suggested that the intermediary had 'a lot of influence' in their organisation' because "He set up meetings which led us to hiring the people we have" (Interviewee #3, 8 May 2014). The intermediary himself suggested that he,

> [H]elped many international organisations to find lawyers, who is the best fit for them. I also try to help local lawyers, for example, with their resumes in English (then they can learn more on the job) and also help them to understand the process of human rights … some are involved in the NLD but not all … I also like to help young lawyers to go abroad. (Interviewee #17, 23 Sep 2014)

During one of my visits to the lavish, perfume-scented lobby of the 'Traders' hotel (now Sule Shangri-La), which served as a mobile office for foreigners in need of air-conditioning, a respite from the buzzing of Yangon streets, and good internet connection, I listened in to a conversation between two foreign lawyers who were the country managers of two INGOs, one well known with offices across the globe (A), and one small, with operations only in Myanmar (B) (field notes, December 2014):

A: He will be in demand when he comes back [from studies abroad]
B: That's why we have to follow his wishes, so that we can keep him away from people like you; we are basically only doing this project so that we can keep him.

The representative from the smaller INGO was happy that the local staff was back with them after having completed a study programme in the U.S., but expressed concern that the bigger INGO would offer him a better salary and lure him away. The country representative then suggested that the price to keeping him was his autonomy to design and carrying out projects. We can interpret this story as an indication that intermediaries wield influence (more such indications are presented in the table below) that extends to steering the direction of rule of law assistance activities in Myanmar.

Reliance on Intermediaries

Foreign Practitioners describe their reliance on intermediaries
He [intermediary] is the connection to a lot of different groups, he is the key person to reach out to local groups, it worries me a bit. Not surprisingly, things are very interpersonal. All our work is done through him and I am a bit suspicious. I try to balance it a bit. Everything I hear from other people is that he is very principled and procedural, I trust him but, for example, he is a former political prisoner and has a lot of connections with the NLD and split up groups of the NLD which means that a lot of our partners relate to that. (Interviewee #3, 8 May 2014)
They became very reliant on one junior lawyer and I told them this, I am pretty sure he chooses who to talk with, which gives him a lot of power. They did acknowledge that it is an issue but say it's a necessity and see no other way forward. (Interviewee #41, 11 December 2014)
Intermediaries explain how they experience their influence
When it comes to choosing institutions or activities to support my opinion will be influential when it comes to material things, just a bit. (Interviewee #6, 19 May 2014)
First they tried to do the trainings on their own but they could do nothing without us. (Interviewee #14, 5 October 2014)
Without us, the [donor] initiative would probably not be as successful. (Interviewee #17, 23 September 2014)
I am much influential, [they] took my advice serious because they know I know best. They think I do it. (Interviewee #17, 23 September 2014)
They pay 100 % attention to my advice, they rely 100 % on my knowledge, I really appreciate that. (Interviewee #55, 25 September 2015)

6.1.1. A new Cultural and Linguistic Setting

In Myanmar's nascent rule of law assistance marketplace, intermediaries become imperative for foreign development actors' attempts to gain traction with their rule of law model because they need help to understand a new cultural and linguistic setting. One foreign practitioner explained how it was only possible to "get things done in the country both language- and culture- wise" with the assistance of an intermediary. Otherwise, he suggested, "You can only scratch the surface" (Interviewee #2, 7 May 2014). The perceived complexity of hierarchical structures and reluctant government counterparts (as an effect of an authoritarian culture of secrecy and lack of transparency) caused foreign actors to suggest, anxiously, that they lacked significant information about "What is really going on … How is the current system working? We just don't know" (Interviewee #9, 23 May 2014; see also interviewee #35, 19 November 2014). Foreign actors thus established contacts and networks outside formal channels (Interviewees #3; #5; #7) because they needed "some internal route to get government information (for example draft laws) without hurting anyone" (Interviewee #5, 16 May 2014). As I outlined in Chapter 2, many of the foreign actors who arrived in Myanmar to work on rule of law assistance after 2011 had little experience working in similar settings. Save for a few senior consultants, many were young and inexperienced when it came to understanding authoritarian politics. While some had experience from a Southeast Asian setting (Cambodia), the positioning of foreign legal experts in that setting has some significantly different features, due to the extraordinary events that caused the creation of the United Nations Transitional Authority (Mayall 1996) and the subsequent Extraordinary tribunal (Sperfeldt 2013). If foreign practitioners had worked previously during the democratization periods in Indonesia or in China (prior to its

reversion to autocracy under Xi Jinping), perhaps they would not think that hierarchy "is really complex to understand" (Interviewee #5, 16 May 2014).

Foreign practitioners commonly mentioned a main cultural challenge being communication and in particular, the Myanmar concept of *ana* or *anade* (e.g., Interviewee #54, 25 September, 2015), which according to one foreign practitioner, relates to power hierarchies and structures (Interviewee #8, 22 May 2014). Myanmar scholar Steinberg explains *ana* or *anade* as the 'unwillingness to embarrass the leadership (or any social superior) by bringing bad news, or causing someone to be uncomfortable.' Such unwillingness relates to the 'strong hierarchical system within Burmese society that tends to enhance the authority of the leader and his or her power' (Steinberg 2001, 42, 2013, 153). Seekin's (2006, 66) Historical Dictionary of Burma (Myanmar) describes *anade* as involving:

> very strong inhibitions against asserting oneself in human relations, described as shyness, embarrassment, or awkwardness. This is coupled with a strong sense of consideration for the feelings of others and a desire not to cause them to feel psychological distress or unease.

Examples of the social effects of *anade* include students' reluctance to ask a teacher questions for fear of distressing a superior or failing to reveal a serious illness to family members for fear of making them worried (Seekin 2006, 66-67). The concept thus influences aspects of everyday social life, not only relations with an authoritarian leadership or between subordinate and ruler.

According to intermediaries, *ana* means: "being hesitant to disagree - we will not show it, this makes it a little bit difficult to detect the opinions of feelings and people involved" (Interviewee #6, 19 May 2014). In practice *ana* means that "the Burmese person is not telling it all, you know *anade*" (Interviewee #10, 12 May 2014). A translator needs to understand when *ana* is happening and "has to be able to ask for more info by themselves - but this is not easy" (ibid).

Intermediaries experience challenges in working with foreign practitioners who are too direct in their communication: "She is sometimes very straight forward and knows what she wants - this can be a bit of a culture clash sometimes" (Interviewee #17, 23 September 2014). Foreign practitioners, themselves, may understand that their directness of communication is an issue that they choose to ignore to various degrees:

> It was a challenge also how direct we were in meetings etc. We couldn't be very consultative, would send agenda ahead of time, in our mind they could change it. They got frustrated that they could not talk freely. We had to design for outcomes but they want more discussion. Our national counterpart acts as interpreter, he is not interpreting only, sometimes there are bigger interpretation issues with a real interpreter, they don't soften things up the appropriate way, as we speak rather direct. (Interviewee #8, 22 May 2014)

> There is a fear of change and of doing something different here. I tell him to say something direct and to not 'soften up' the message but he will soften it up. Sometimes I will ask the translator straight away: 'did he soften it up?' and say that 'this needs to be direct.' (Interviewee #40, 9 December 2014)

Seekins (2006) suggests that there exists a tension between foreigners who interpret *anade* as an obstacle to free discussions about (and thus the development of) democracy and civil society, for example, while for local and national actors too much frankness in discussions may be regarded as aggression. The interview excerpts above suggest that foreign practitioners may be aware of the complexity of communication that is too direct, but refrain from a change of approach. In light of Seekin's suggestion, the strategic ignorance toward such deep cultural aspects of communication is troubling.

Another issue of access related to language skills. Few foreign practitioners spoke local languages[162] and the English sufficiency amongst local and national counterparts was low. Such knowledge deficits posed challenges for efficient development work. For example, a government employee in Nay Pyi Taw described the

[162] Due to political strategies under military rule opportunities to learn English for people in Myanmar were scarce. For some, English learning was made possible through their political engagements and support by foreign actors (as I outlined in Chapter 4). Opportunities to learn Myanmar language have similarly been scarce and remain so today. A majority, however, of my interviewees that are foreign practitioners attempted to learn Myanmar language through private tutoring, evening classes, and time spent in local tea shops to chat with local people. The eagerness to learn Myanmar language seemed higher among more junior practitioners (who were often in their first field setting) than more seasoned ones.

issues of bringing in English speaking foreigners to work in government agencies who did not have any Myanmar language skills:

> In the beginning most would come with their English speaking experts and provide trainings in English. Then they started realizing that this approach did not really work. More and more started to recruit their own Myanmar staff. We have one foreigner working in here and now after a couple of months she is getting a junior Myanmar colleague …, it is needed. (Interviewee #36, 19 November 2014)

A foreign practitioner who was reliant on her cooperation with local lawyers suggested that she had surrendered to the language difficulties and admitted with some disappointment: "I don't spend time talking to lawyers; there are language barriers" (Interviewee #9, 23 May 2014). Instead, foreign practitioners relied on the assistance of intermediaries (Interviewees #2; #9; #36) to do translation and interpretation work rather than a professional translator or interpreter. The fact that international legal development practitioners do not speak local languages, of course, is nothing new. However, the way translation issues impact the success of development interventions is an issue that has attracted surprisingly little attention in the field of rule of law assistance.[163]

6.2. 'Cut-throat' Processes to 'get' Intermediaries

Because of the difficulties of engaging in rule of law development work in a new setting, foreign actors enter into a competitive struggle to find competent intermediaries in Myanmar. A foreign lawyer and programme manager expressed his irritation with this, and suggested that the search for individuals (or groups of individuals) who could serve as intermediaries had turned into a ridiculous competition by 'internationals': "There is a huge rush by internationals to get these people. Internationals are stealing each other's staff. It's like cut throat processes" (Interviewee #02, 7 May 2014). Another foreign

[163] I analyse issues of translation in detail in Chapter 8.

practitioner exclaimed that she needed "To get one of those!" when we discussed the obstacles her organisation experienced. 'One of those' meant an English-speaking Myanmar lawyer with knowledge and understanding of international ideas of human rights and rule of law (Interviewee #03, 8 May 2014). A programme manager explained how it was comparatively difficult to set up a local team in Myanmar: "We just could not find anyone. I hope someone can take over in two years' time. When we say that we want them to take over they might feel overwhelmed, so much demand for people like them" (Interviewee #4, 15 May 2014). Similar notions were expressed by several foreign development practitioners, for example:

> It is difficult to find bridging organisations and individuals, all are so busy. (Interviewee #15, 22 September 2014)
>
> We need to have local staff as soon as we get enough funding but there are not many people available, they are overburdened. (Interviewee #5, 16 May 2014)

The frustration foreign practitioners felt is not unusual in transitional settings where development activities are overwhelming, or where as in Myanmar, the host government has little previous experience of hands-on interactions with the international community. Halliday and Carruthers (2009) show that it can be more difficult to find competent and loyal intermediaries in settings where there are great gaps between the 'global' and 'local' (2009, 551-552) which might 'lead to competition for intermediaries among international agencies, between global and local actors, and even among local actors' (2006, 576). They are describing Indonesia, but we see a similar phenomenon also in Myanmar.

As a consequence of the competition, a common understanding by foreign practitioners was that most staff would not hesitate to leave their contract when a better

offer was made by a competing organisation (Interviewee #2, 7 May 2014; interviewee #3, 8 May 2014):[164]

> He was a practicing lawyer, worked for a donor and completed his two year contract which is very uncommon as these guys get offers from everywhere every day, USAID tries to snatch everyone, so it was a big thing that he stayed through the contract period. (Interviewee #29, 23 October 2014)

Such switching between employers and assignments is not surprising in light of the suggestion made in Chapter 4 that intermediaries might be more interested in building their own social capital than in supporting the specific objectives of foreign organisations. For example, a foreign practitioner explained his local staffs' unwillingness to take more responsibility over the organisation with reference to the cultural notion of *ana*: "We would all like him to be more assertive and take on more but it's *ana*, he doesn't want to do it. We would like to see him take a stronger role" (Interviewee #48, 10 October 2014). The intermediary himself, on the other hand, suggested that he did not want to take on a leadership role within the INGO because he had other political goals, even though he perceived that what he learned there in relation to access to justice was politically important and thus related to his political work (Interviewee # 55, 25 September 2015).

6.2.1. 'Pick-ups'

Donor events and conferences provided ample opportunities for foreign practitioners to find local partner organisations, staff, and consultants (Interviewees #19; #8; #15). One foreign practitioner suggested that it was "[After] 2008/2009 you would see people stand up [at events] and speak English" (Interviewee #12, 7 May 2014). A foreign lawyer and practitioner replied to my question about how her

[164] Foreign practitioners' movement between contracts and organisations was on the other hand never described as an issue. A follow-up check in 2016 suggested that a majority of the foreign practitioners who I interviewed in 2014 had either left their jobs in Myanmar or changed employers.

organisation enrolled the local intermediary by saying: "I met [him] through various [*laughs*] rule of law conferences and trainings" (Interviewee #8, 22 May 2014). Another foreign practitioner described the process of finding local partners: "We got a snowball connection through several groups. In Yangon we have just been going to events and conferences. Who else should we meet? Brought us to other people, it is a slow and informal process" (Interviewee #15, 22 September 2014). One foreign practitioner was not sure how they ended up with a local intermediary: "Somehow he was appointed as coordinator of the new steering committee - I am not sure how it happened as there were some strange translations going on during that meeting" (Interviewee #8, 22 May 2014).

For local practitioners, donor events provide a novel opportunity to be discovered by foreign actors. A local intermediary explains how he got his first job for an international organisation:

> I was 'picked up' during conference led by South African NGO where I was leading one of the working groups. I got a chance to speak and presented on behalf of my group. Probably in that workshop some people saw me as a potential candidate. [They] came up to me to discuss, they wanted my opinion. They asked if I wanted to be a part of [NGO]. I was their consultant, my first international job. (Interviewee #14, 5 October 2014)

A similar process of being enrolled as an intermediary was described by another local lawyer: "I met [foreign practitioner] at a conference I was facilitating and he invited me to Geneva" (Interviewee #17, 23 September 2014). The intermediary then became a legal adviser for the organisation that the foreign practitioner in question worked for. A local practitioner suggested that his previous engagement with pro-democracy work for a foreign organization meant that he "Got a lot of friends" and that therefore "The donor chased me up" (Interviewee #24, 14 October 2014). The 'pick up' also extended to one foreign practitioner who had been asked to come for a meeting and then asked

to travel to Nay Pyi Taw to support a national rule of law actor (Interviewee #41, 11 December 2014).

For local lawyers, opportunities to work for foreign organisations often resulted in opportunities and higher remuneration for junior professionals with English skills than they might otherwise have had access to. However, no local respondents mentioned higher remuneration as a motivation for their work with foreign organisations, even though they were aware that some believed that it was higher earnings that motivated them (see e.g., interviewee #17, 23 September 2014).

Local intermediaries who had been picked up by foreign actors continued to work for various donors on different projects and contracts. Intermediaries themselves were reluctant to reveal the extent of the activities and the full range of actors they were entangled with; they were careful in balancing their various roles. For example, one foreign practitioner suggested that when they set up their office in 2012, they tried to hire a local lawyer but that the person they had in mind: "Would have been a candidate but was too busy; [instead] we hired him as a local consultant, he's a bit sensitive about all his contracts. We started the organization quickly with [him] advising, at that time he wasn't quite as busy with advising everybody, then we hired [x] his friend instead" (Interviewee #48, 10 October 2014).

An effect of the competition to find suitable intermediaries and their resulting parallel engagements also indicates that at this time only a handful of people acted as conduits for much of the initial rule of law assistance to Myanmar.[165] In Callon's (1986) terms, relationships had been established with a few who became representatives of 'the

[165] Similarly, a foreign practitioner addressed the concern that most of the recipients of their assistance were the same people: "The biggest problem to describing rule of law or justice issues is that we work with the same group of lawyers all the time. It is interesting that it is always the same people … Some foreigners who have provided training are for example surprised that people understand the basic principles and 'know the answers' but it's always the same people attending all these trainings and they have learned the answers … These people know what donors want to hear (i.e., the people who want to rise to the top) some are more controversial" (Interviewee #3, 8 May 2014)

masses,' consequently, '[t]hat which is true for a few is true for the whole population' (1986, 12). This dynamic is not unique to Myanmar: Nicholson and Low (2013) find, in the case of Vietnam, that the distinction between roles and agencies were not always clear because the same individuals worked for donors, government legal agencies, or government advisory boards simultaneously. Rodriguez-Garavito (2011, 160) in his analysis of judicial reform in Latin America observes that 'actors in one project may simultaneously or sequentially participate in the other's networks'. Halliday and Carruther's (2009, 297) observation that the channel 'through which the global/local reformist encounters flow' is narrow, is also an accurate description of Myanmar.

6.3. The Importance of Personality

It was evident that foreign rule of law actors enrolled individuals to whom they could relate. Thus, in finding suitable people and organisations to work with in Myanmar, personality matters. In fact, it was hard to miss the fact that rule of law intermediaries were likable, easy conversationalists, and adept relationship builders. This was evident in my own meetings with them, and confirmed by several of my respondents:

> It's down to charismatic individuals who get things done. (Interviewee #1, 6 May 2014)

> Individuals are more important than would be ideal, but that's the case in Myanmar. Organisations are run by charismatic leaders. These leaders are instrumental for driving the agendas. (Interviewee #28, 22 October 2014)

> It is who we hired that has been important. He [the intermediary] is a very interesting guy, a former political prisoner, he is interested in transitional justice. He gets along very well with our Director, it is very personality based. (Interviewee #03, 8 May 2014)

> He has development skills, English skills, confidence, knows how to interact with foreigners. (Interviewee #48, 10 October 2014)

> She is a very easy conversationalist, relationship builder, very likable. (Interviewee #25, 3 October 2014)

> He was recommended by so many people, he is a great guy and always eager to learn, you also have to think about who you want to sit in an office with, he is very devoted, we interviewed a lot of people but he definitely stood out as the best. (Interviewee #29, 23 October 2014)
>
> There was a bus tour on constitutional reform with Pyoe Pin; they tend to find the people who are good … easy to work with. (Interviewee #41, 11 December 2014)

These descriptions are similar to Gonzales' (1972, 198) portrayal of typical development brokers who are educated abroad, have 'cosmopolitan' manners, and are fluent in English, which enables them to instil foreigners with a feeling of ease. That intermediary actors possess certain likable personalities is inherit in the conceptual definition of an 'intermediary actor' (as I outlined in Chapter 1) and indicate that they are relationship-builders. However, these attributes have a particular significance in Myanmar where, as illustrated above, formal processes are opaque and foreign actors are reliant on intermediary actors to carry out their development work.

The possible result of this is that foreign development actors choose to work with intermediaries with likable personalities, rather than with those who possessed local influence. Foreign actors sought individuals with likable personalities who were 'easy to work with' (Interviewee #41, 11 December 2014) and they prized this convenience. Those who were 'good at talking' (Interviewee #3, 8 May 2014) rather than those most qualified and senior (Interviewee #48, 10 October 2014) were often prioritised, which led to resentment and anger by those bypassed local actors who, for example, did not possess the same facility with English. I sensed the tension when a senior local lawyer exclaimed that: "They get much attention from the international side but they are not influential with us … He is junior but has way too much power" (Interviewee #47, 9 December 2014). Such sentiments might also come as a result of senior lawyers' perception of their own hard struggle for legal development for the past decades, while it is the younger generation of lawyers who are now reaping the benefits and making a substantial living out of development projects after transition. Resentment

follows from the view that the younger generation have not sacrificed but have been rewarded nonetheless.[166]

The preference for inter-personal and communicative skills is not surprising because in many settings, individuals are employed for their potential as likable and sociable colleagues. However, it becomes a more intricate problem in a setting that is culturally and linguistically difficult to grasp and where interventions require someone who can connect to spaces of power. One consequence of these current approaches is that they may lead to what Autesserre (2014, 125) frames as a problem of intermediaries who neglect large groups of communities because they are, in fact, disconnected from them. Relying too heavily on people with likable personalities thus comes with the risk of not lending support to other networks that can and should be sustained.

6.3.1. Personal Qualities in Lieu of Rule of Law Knowledge

The importance of personality was also expressed in the suggestions that intermediaries' lack of rule of law understanding or a legal education was compensated for by personal qualities (see e.g., Interviewees #2; #3; #25; #4):

> My previous colleague was excellent, I took him everywhere, he was lovely, competent. The fact that he was not a lawyer complicated some things but it did not really matter. (Interviewee #2, 7 May 2014)

> Our staff is very good at relationships. There is not much domestic experience in this area. Luckily our staff is fast learners and good at relationship building. It is difficult to find local staff in the areas we work with, our senior staff was referred to us by UNDP, we took a chance as she had not worked much with rule of law but her personal qualities were important. She had other development experience instead. (Interviewee #25, 3 October 2014)

> Staying with us gives him a lot of respect, he is not a lawyer. He was for example set up as a facilitator for a conference, local lawyers laughed at him but a lot of people loved him which gave him some credibility. (Interviewee #3, 8 May 2014)

166 For a discussion about various notions of 'sacrifice' during decades of democracy struggle in Myanmar see (Mullen 2016).

The selection of non-lawyers as intermediaries for rule of law development work is interesting in light of the professional status of the actors at whom foreign rule of law assistance is often targeted: Myanmar lawyers.[167] As we saw in Chapter 3, foreign actors often seek resemblances to the rule of law model as it is found in its original setting, where lawyers are often central to supporting the model. They do this regardless of the fact that a lawyer's work in Myanmar differs dramatically from much from the work lawyers perform in the settings where the rule of law model originates (see e.g., Cheesman 2015). However, similarly to what Halliday and Carruthers (2006) find in relation to intermediaries in Indonesia, I find that in Myanmar's authoritarian setting, intermediary actors who can help channel a global rule of law model were particularly scarce because opportunities to learn English and gain an understanding of global concepts (e.g., human rights and rule of law) had been limited during military rule.[168] In effect, when lawyers were difficult to find (which is also explained by the strategies to marginalise legal education that I outlined in Chapter 5), intermediaries' lack of rule of law understanding and legal education was compensated for by personal qualities (see e.g., Interviewees #2; #3; #4; #25; #31; #34; #53).

6.4. Strategies to Create Intermediaries

When I asked a foreign rule of law consultant about the status of one organisation frequently mentioned by rule of law practitioners – in order to find out if it was a 'local' initiative -- the reply was interesting: "I don't think I can comment on that [*smiles*], I

[167] As illustrated in Chapter 5.

[168] In particular, foreign development actors had a hard time to accept intermediaries who did not believe in universal human rights. For example, as one foreign lawyer and programme manager explained: 'some national advisers had to leave us as they realized that their goals did not match Human Rights, when they realized that the people they don't like (like the Bengalis) should also have Human Rights' (Interviewee #29, 23 October, 2014). The quote indicates that intermediaries needed to understand concepts like human rights similarly to a foreign well-educated human rights expert and advocate (which was the profile of the foreign practitioner).

think you understand the thing, they say they are…" (Interviewee #40, 9 December 2014).

When suitable intermediaries were not readily available, foreign rule of law development actors create them. They do this through supporting the creation of coalitions and NGOs that could help them channel the rule of law model in its new setting. Bierschenk et al. (2002) suggest that development actors often prefer associations and organisations over individuals as intermediaries because, arguably, coalitions provide less room for non-transparent and unchecked activity. Within such organisations actors with outside connections are the ones that usually become 'leaders' (2002, 25).

In Myanmar's young development setting, the creation of organisations was easily observed: foreign development actors affirmatively gathered individuals to form local NGOs. Some did this in order to fill their need for intermediaries, while others based their business model on creating institutions deemed necessary for the rule of law. IBAHRI, for example, worked towards the establishment of a national lawyers' association in Myanmar (International Bar Association's Human Rights Institute 2012), which also exemplifies the common pattern of attempting to mimic institutions that are found in a development models' original setting (Pritchett, Woolcock, and Andrews 2012).

6.4.1. Gather People who Support the Rule of Law Model

The set-up of new coalitions and organisations involved the identification of people who seemed 'to be doing good stuff' whom foreign actors helped 'off the ground' in order to 'facilitate and enable' (Interviewee #28, 22 October 2014; see also interviewee #24, 14 October 2014):

> We support coalitions of interest, if you pick up the right issues they will help influence the rules of the game both formally and informally. Coalitions don't necessarily exist … you identify the actors who have an interest in rule of law; they might be both formal and informal. We have networks through the team. Who has influence where? How do we build both horizontal and vertical relationships?

For example, a well-known programme that worked on rule of law related issues, Pyoe Pin, had been initiated by a small group of people representing foreign humanitarian donors 'during dictatorship' in order to reach civil society (Interviewee #12, 7 May 2014). A programme manager explained the rationale:

> We thought we wanted to do something with rule of law, but not going to court or anything, we don't have any lawyers, we want to develop legal awareness and networks etc. and see how actors can work together. We are not promoting the rule of law, no one is, we are building capacity so that people can do it. (Interviewee #20, 30 September 2014)

MLAW was also created with significant foreign support. It was established after a foreign sponsored visit to South Africa to study legal aid. A programme manager described it thus: "We choose people with the idea to build relationships between government and civil society ... it was about finding those key leaders" (Interviewee #24, 14 October 2014).

Instead of creating new organisations, foreign development actors also worked with existing organisations that, as a result of interactions, moved their activities towards rule of law. Michael (2004, 171) describes such practice as one of donors positively encouraging 'local NGO's to branch into new areas of development.' A foreign programme manager (Interviewee #20, 30 September 2014) elaborated on their positive encouragement of one local NGO into areas of rule of law:

> They were not an obvious way to work with rule of law but we respected their work, we are friends with them. The embassy was friendly with them previously … there was a very small circle back in those days. They operated below the radar, below the surface, getting farmers together which sounds innocent but is not. Back then they did not describe their work as rule of law. We sat down for three days and considered what we should do, we went through potential areas. The idea of doing something legal, something with the law started to take hold. We started talking about how we could involve lawyers a bit more, how could we get lawyers and civil society together? Seems funny today, but this was 2010. They knew this law firm, had some friends who were lawyers.

> I was out with someone from the donor about a month before we submitted the proposal – we had some drinks- and I suggested the local partner. He was a bit dubious about how that would work- he had not seem them in that light before. They were the 'wishy washy folks,' farmers and artists, this would be a bit of a departure for them, but they are an organization that would be able to do such work, it did not need sector expert knowledge. Then all of a sudden they are involved in rule of law.

The examples above suggest that foreign development actors looked for supporters of the rule of law model and when such people were not readily available, they created new organisations to play an intermediary function. This dynamic is not unique to Myanmar: Halliday and Carruthers' observations from China and Indonesia are that foreign actors struggle to 'find intermediaries who are competent, influential and loyal' and therefore form alliances with local NGOs or if no appropriate organization exists, create them to provide an intermediary function (2009, 302).

While scrutiny of foreign organisations' support to local NGOs with potential ties to specific spaces of politics and power is imperative, in order to avoid some of the harmful effects of aid, (Hilhorst and Jansen 2003), in Myanmar it was mainly local organisations that pushed back on donor involvement or refrained from working on issues they deemed too sensitive. They then risked being labelled as inappropriate counterparts (Interviewee #3, 8 May 2014). One example of an area local NGOs wanted to refrain from entering, but that foreign donors sometimes pushed for, was working with the Rohingya Muslim minority (Interviewee #29, 23 October, 2014).[169] According to local respondents, this was a highly contested area to work in, that could ruin an organisation's reputation and lose them respect (Interviewee #33, 11 November 2014).

[169] Anderson and Olson (2003, 22) have previously stressed the potential by foreign organisations to worsen divisions among conflicting groups by advocating for, and appearing to favour, a specific side -- often a marginalised group.

When foreign development actors created new organisations in Myanmar, even when these were presented as local initiatives, they ended up operating with foreign involvement in the form of guidance and expertise but were also subject to more direct attempts at steering activities (Interviewees #14; #20; #24). Donors' involvement with local organisations was often sustained through positioning foreign practitioners who could serve as direct channels of communication from donors to those on the ground. In terms of sustainability and effectiveness, one practitioner expressed annoyance over the fact that the foreign donors who funded the local initiative she worked for repeatedly bypassed senior Myanmar colleagues and asked her for certain information directly: "The donors are very sneaky, I don't sit above anyone else, I am their counterpart. Still donors try to contact me directly as it is an easier and quicker way coming through me" (Interviewee #40, 9 December 2014). Another foreign practitioner who was placed with a local organisation concurred; she suggested that donors contacted her directly to get reporting "probably because I am more responsive and easier to communicate with" (Interviewee #53, 5 October 2015). Hilhorst and Jansen (2003, 7) have also suggested that the rationale for such placements by donors may be to minimise mismanagement of funds by having expats 'managing, advising and reporting'.

Such strategies to 'implement programs in a way that fosters dependency on outside 'experts' who are constantly brought in to run activities' (Anderson and Olson 2003, 26) presented challenges of credibility and legitimacy in Myanmar. A local intermediary, for example, explained that even though he was working on a project (presented as a local NGO) and thus was the one who most often met with local counterparts, it was still seen as an 'international' and thus 'foreign' initiative by local counterparts (Interviewee #24, 14 October 2014). Underestimating sentiments of distrust toward thinly disguised international involvement in 'local' organisations may

also pose a risk of increasing that distrust, as recently seen in China and Russia which have introduced strict regulations that target foreign NGOs that conduct development and advocacy activities (Phillips 28 April 2016, Blake and Bartlett 30 November, 2015, Wong April 28, 2016).

Ultimately, when foreign organisations potentially sideline existing local organisations through preference for ones created with foreign involvement this has implications for development sustainability (Anderson and Olson 2003). Hilhorst and Jansen (2003, 6), writing about the neighbouring field of humanitarian aid, suggests that 'many NGOs are the offspring of INGO operations' and therefore special attention need to be paid 'to what extent they are rooted in society, and to what extent they really represent the intended target group.' In fragile contexts such strategies may even have destabilising effects (Anderson and Olson 2003, Hilhorst and Jansen 2003). The set-up of new organisations also matters in light of repeated calls for 'local ownership' of development processes (Bosch 2016). The consequence may thus be a construction of such ownership on behalf of foreign interests, coupled with intermediary organisations that respond to donor objectives rather than express a genuine interest in local level grievances.

6.5. New Opportunities in the Rule of Law Assistance Field

Local actors also drew on their established capital and new connections to set up organisations, or shifted their organisations' prevailing focus, to work on rule of law-related issues. They re-invented themselves as development consultants, local staff and NGO leaders parallel to the processes of enrolment that donors engaged in.

Bierschenk et al. (2002) suggest that development brokers enter their career as opportunities present themselves, rather than after careful planning to obtain such roles.

Therefore, they say, the nature of existing development configuration results in situations where brokers are more likely to 'respond to the dynamics of 'project availability" than to 'sell' initiatives originating 'at the bottom' (2002, 24). The result of this, they suggest, is that as local development brokers intervene in existing systems that change due to the influx of aid, they may disrupt the existing political balance, by aggravating antagonisms or forming biases to their own benefit (gaining monopoly) through the use of certain strategies that creates patron-client relations (2002, 26-27). Cohen and Comaroff, (1976, 91) on the other hand, find that local leaders in their studies built careers by constructing the need for intermediary roles and services.

In Myanmar's emerging rule of law assistance field, it seems that NGOs and coalitions have been able to mobilize, if not more, at least more transparently than was possible for NGOs operating during military rule (Liddell 1997, South 2008). This coalesced with their increased 'discovery' by foreign organisations that offered them funding. Local NGOs thus transformed from working on pure advocacy activities into being positioned as intermediaries for foreign actors (Bierschenk, Chauveau, and de Sardan 2002).

6.5.1. Re-inventions

Foreign practitioners suggested that "There has been an uprising of [local rule of law] organisations - everything has just expanded" (Interviewee #9, 23 May 2014; see also interviewee #12, 7 May 2014).[170] In particular, a foreign practitioner suggested that, "In 2011 a lot of rule of law groups sprung up, former pro-democracy people, it made it

[170] The organisations were often described as having 'charismatic leaders,' 'take a lot of funding' (Interviewee #3, 8 May 2014), and "Always popular with international organisations, they are young and switched on, active I guess…" (Interviewee #8, 22 May 2014).

more OK to start advocating" (Interviewee #53, 5 October 2015). Another practitioner reflected on the change she had seen:

> The first time I came [to Myanmar] was in 2009. Then there were few names you would always go to- now that pool is expanding. When people learn how to play this game, I think the roles that people play also change. My impression would be that I have met some people or groups … my impression is that they change roles, for example one organization I see has changed from being mainly engaged in information giving to positioning themselves for funding and then they change … (Interviewee #7, 21 May 2014)

The leader of one local NGO suggested that the organisation's approach to development work had changed after the elections:

> We are a pioneer organization for rule of law, after the 2010 election we realized that rule of law is needed for democracy. The government understanding is very different from the one by people, the government wants rule by law. There was a big change after 2010, there was little space to mobilise before. Our programme, for example, only focused on strengthening civil society before. (Interviewee #30, 24 October 2014)

This NGO leader was, however, not completely positive about the increased amount of funding that they had managed to attract after the arrival of foreign donors in Myanmar; in his view he had to struggle to carry out the organisation's own agenda while pushing back on foreign funders. A similar suggestion came from a local project manager in Myanmar who commented that "Rule of law is now on everybody's mission and vision but then they do all these different things and assume that they work on it" (Interviewee #46, 9 December 2014). The same interviewee was concerned by the fact that so many local NGOs had sprung up "Really overnight, you would be surprised" to work on 'pre-fabricated donor programmes' that often involved research. She explained:

> It's supposed to be rule of law in a very down to earth way, with farmers, all of a sudden they become NGOs. You can't turn a farmer into a researcher all of a sudden. All of a sudden many little civil society and rural based organisations are doing legal awareness training then they collect data. Bringing those data back together and getting their conclusions worry me, it doesn't mean their data is valid, they don't apply data collection methods, there is no objectivity, they have already determined what they want to find.

Other examples of organisations that re-invented themselves in the rule of law field included a law practice that was established in 2010 but by 2012 had moved into NGO

work focusing more on legal aid and awareness training (Interviewee #17, 23 September 2014). The same year the leader of the NGO had met a foreign scholar who called "to ask many questions [about rule of law] … there was more talk about Human Rights before that" (ibid). Two local practitioners and NGO leaders concurred; they explained that, "Before 2013 we were not interested in rules of law [sic] but now we are interested in connecting rules of law and human rights, we will incorporate rules of law in future training" (Interviewees #22 and #23, 2 October 2014). The NGO leaders explained that they had started some rule of law training based on a 'rule of law check list' they had gotten from a foreign lawyer. Another NGO was established after a study tour abroad to learn about opportunities for rule of law development. The organisation's leader explained the rationale for setting up the new NGO as, "I learned a lot, after I went back and founded the [NGO] … [with a] colleague I know from the human rights training at the British Council" (Interviewee #33, 11 November 2014).

One important implication emerging from this overview is that, even if we observe local actors who 're-invent' themselves within the rule of law assistance field so as to emerge as intermediaries, it is often as a result of foreign involvement or influence. What follows is intermediaries use of 'international strategies', as I illustrated in Chapter 4. For some intermediaries, the influx of foreign development actors, however, results in burdens rather than opportunities.

6.6. Intermediaries on the Government Side

Due to the continued complexities of Myanmar's authoritarian politics, opportunities to leave a government job and work for foreign actors were still limited at the time this study was conducted. Government staff residing in the isolated capital, Nay Pyi Taw,

have their daily moves monitored and opportunities to meet foreign actors outside formal meetings are limited.[171]

Out of my local respondents was a former judge who had left a government job to work for a foreign donor. The respondent suggested that such a move was possible for her because people knew what stance and opinions she had had towards the government (Interviewee #27, 7 October 2014), thus indicating that, based on her critiques of the previous government, she was taken for someone trustworthy. I was given the business card of a judge who allegedly searched for opportunities with foreign actors. I was however, never able to get in touch with him: e-mails bounced back and his mobile was continuously switched off. It may well be that opportunities for government staff to gain better-paid opportunities with foreign actors will be easier in the future, as the tight control over government staff eases. In 2014 that was not yet the case.

However, as I sought to speak with government agencies as counterparts in rule of law programming, I found intermediaries. In the case of Indonesia, Halliday and Carruthers observe that, while foreign development actors will seek intermediaries who are invested in their ideologies and global models, national actors will seek intermediaries who serve their national interests (2006, 530-531). While this may also be the case in Myanmar in the longer-term, in this start-up phase for rule of law assistance, what seems to matter most is English language skills. It is often the few who speak English who are put in positions to 'deal with the internationals' (Interviewee #47, 9 December 2014). As in other young development settings, these intermediaries are 'bombarded' with meetings (Interviewee #5, 16 May 2014): the influx of international rule of law development actors put pressure on government actors, who face an

[171] Government officials in Nay Pyi Taw reside in the same apartment complexes as their colleagues and are often transported to and from work in government buses with their colleagues, some departments also have colour coded clothes.

increase in requests for meetings and collaborations as well as being the target of direct critique. Their positioning provided a way to buffer direct demands from foreigners.

One foreign practitioner suggested that sometimes government actors requested the assistance of trusted international consultants to help explain the difficulties and challenges they faced to other internationals (Interviewee #41, 11 December 2014):

> They [Union Attorney General's Office] had asked me to come on my own, I was a bit nervous. Would they arrest me? Throw me out of the country? … I was taken to a room to meet with them. At the meeting they said: 'we know what you do ... we are tired of the internationals being upset with us all the time, can you help us explain to them?' I told them that if they have their reasons for doing things in a certain way then they should explain to the internationals why. They were a bit afraid to do this so I did it with them.

What differs here from the intermediary actors who re-invent themselves to find more lucrative opportunities in the new development field is that the position as government intermediary was less appreciated. Government staff were often put in an intermediary position on an involuntarily basis because they possess good English skills. One such person, for example, told me about the ambivalent feelings he had towards such work "It torments me a lot, I don't feel like I am qualified for the task, I feel trapped in this role… At the moment I am stuck here, they need me, but I am hoping to move on some day" (Interviewee #34, 18 November 2014). The quote reflects the complex situation government employees were in as they reluctantly had to accept their position, in contrast to the more enthusiastic non-government intermediaries, who were able to make a good living out of their positions.

6.7. Conclusion

In this chapter I outlined how intermediaries emerged as a result of new opportunities in Myanmar's young rule of law assistance field. I suggested that it was individuals who possessed specific characteristics who are enrolled as vehicles to transfer the rule of law

model. When such people are not readily available, foreign development actors support the creation of coalitions and NGOs. As a result, both individuals and groups of individuals have emerged as intermediaries became points of interaction in the rule of law development field.

As a result of the influx of foreign development actors, individuals have re-invented themselves as consultants, NGO leaders, and employees for international organisations. Intermediaries have also emerged on the government side. However, in Myanmar's hybrid authoritarian political system, such positioning is less about opportunity and choice and more about a 'burden' dutifully carried out. I argued that the emergence of intermediaries happened as a result of foreign actors' demand for assistance in accessing and understanding a new development setting. Local actors thus 're-invented' themselves as a result of such demand and because the Myanmar government perceived a need to insert a layer of actors in between them and newly arrived foreign development actors.

These practices of enrolment resulted in foreign practitioners being significantly dependent on intermediaries. This matters for rule of law assistance because through such reliance intermediaries steer the direction of rule of law assistance activities and selects who gets to be involved as local counterparts of rule of law assistance. The tendency by foreign actors to seek individuals with likable personalities who are 'easy to work with' has significant implications for rule of law assistance because it might signal that foreign actors choose to work with intermediaries out of convenience rather than those with the most influence.

I showed that foreign development actors were not always aware of the many involvements of the intermediary who was carefully balancing their various roles. When the most sought-after intermediaries work for several donors at a time it may look like

multiple actors who support the rule of law model, while in reality it is only a handful of people who channel much of the rule of law assistance to Myanmar.

In the next chapter I illustrate in more detail why intermediaries are pivotal for foreign rule of law actors' development efforts as they take on a role as 'trust builders' – that is – the trusted link between foreign, national and local rule of law actors.

Chapter 7. Intermediaries as Trust Builders

> [T]he greatest obstacle in the way of peace and progress in Burma is a lack of trust: trust between the government and the people, between different ethnic groups, between the military and civilian forces. Trust is a precious commodity that is easily lost, but hard indeed to take root. (Aung San Suu Kyi 1997, x)

In Myanmar's emerging rule of law assistance field intermediaries took on an important role in building trust between newly arrived foreign development actors and national and local counterparts.

During one of my trips with a local NGO to Myanmar's Western Rakhine state, I met a foreign rule of law practitioner who regularly travelled across Myanmar to meet with local lawyers. He told me that his organisation arrived in 2012 and had had little previous engagement in Myanmar. He went on to express his anxiety over some of the questions he received from local lawyers with whom he met in different parts of the country: "These local lawyers ask me about [organisation's] interests with our work in Myanmar; they tell me that they know about foreign interests. I don't know what to tell them. I mean I know what my own interests are and that I believe in the work that we do. But I don't know how to convince them about [foreign organisation's] interest" (field notes, October 2014). The local intermediary who worked alongside the foreign practitioner suggested that these were issues that related to distrust; local people did not trust foreign-funded organisations and did not think any foreign organisations engaged in the country simply as an expression of good will. However, the intermediary suggested that the local lawyers trusted him because they knew and liked him: "That's how our society works" (Interviewee #14, 5 October 2014).

This foreign practitioner's experience of being questioned repeatedly, and the intermediary's explanation, hint at a central aspect of development cooperation in Myanmar; namely the distrust that remains towards foreigners and foreign interests and

the importance of relationship-building. Interpersonal relations in the rule of law assistance field in Myanmar are thus characterized by trust - 'confidence in one's expectations' (Luhmann 1979, 4). In the example here, the intermediary views his role as key for building trust with local counterparts because foreign actors are distrusted – the opposite of trust (Hardin 2001, 496).

Development studies have previously highlighted the importance of relationship-building and trust for development outcomes. Diallo and Thuillier (Diallo and Thuillier 2005), in a study of international development projects in Africa, find that trust and interpersonal relationships are key factors for development success. In a case study from Bosnia, similarly, Moore (2013) finds that relationships between foreign and local actors were a variable that affected the success of peacebuilding initiatives. Anderson, Brown et al. (2012) present trust and respect between foreign and local counterparts as a prerequisite for effective aid as a key finding from their study of different conflict zones. McWha (2011, 37) in her exploratory study of 'capacity building' initiatives in Cambodia suggests that the creation of '[a] relationship based on trust and respect may be essential for the success of capacity-development initiatives' (2011, 37). Developing such relationships between foreign and local counterparts was dependent, for example, on opportunities to chat informally with colleagues and to develop friendships outside of work (ibid). Nicholson and Low (2013, 38), in comparing foreign rule of law donor approaches in Vietnam and Cambodia, find that Japan International Cooperation Agency (JICA) is perceived as being better at winning the Government's trust because: 'Using pools of common consultants, as JICA does, builds long term relationships and trust in a way that the current practice of tender and contracting used by most Western donors does not'. JICA's success was also dependent on their staff's devotion to spend time with counterparts outside of work and trying to build personal relationships (Nicholson and Hinderling 2013). Studies have also

collected the voices of local counterparts to rule of law assistance who find that donors' short-term approaches constitute an obstacle to trust- and relationship-building with foreign practitioners (United Nations Development Programme 2011a, International Council on Human Rights 2000).

A key theme that is missing from these analyses is the role intermediaries play in building relationships and trust between development counterparts. In order to understand how intermediaries influence rule of law assistance in Myanmar, we thus need to understand: how trust functions as a key indicator for development success; why ideas of distrust exist in the Myanmar setting; how trust was gained; and what kinds of issues intermediaries were trusted with.

This chapter commences with a discussion about interpersonal and institutional trust and distrust in Myanmar and seeks historical explanations of how past regime practices, including national policies of isolation and the external sanctions regime, resulted in widespread distrust of foreign actors and foreign-influenced policies. Thereafter, I address interview data that emerged during discussions around why intermediaries were pivotal for foreign rule of law actors' development efforts and how foreign actors, both consciously and unconsciously, made use of intermediaries' agency for their aims and objectives. The section outlines the expressed need for a trusted link between foreign practitioners and local and national counterparts. It analyses the role intermediaries play in becoming trust- and relationship-builders.

This chapter concludes that trust and relationship building can be seen as a prerequisite for successful rule of law assistance and is the focus of much donor effort as they attempt to build trust with local counterparts in Myanmar. However, because foreign actors cannot supply prior proof of trust, it is the known actors, such as intermediaries, who instead take on the role as trust builders. While doing so, however,

intermediaries are repeatedly criticized for being too close to foreigners and their interests.

7.1. Interpersonal and Institutional Trust and Distrust in Myanmar

Levels of both institutional trust (perceptions of fair processes and institutional identities) and inter-personal trust (relationships between individuals) (Hardin 2001) are low in Myanmar, where for decades a system of military rule promoted fear, power, and control rather than trust (Fink 2001).

A 2014 Asia Foundation survey on 'civic knowledge and values in a changing society' that included face-to-face interviews with more than 3,000 respondents across Myanmar's fourteen states and regions, finds that trust in Myanmar society was 'astonishing' low, both towards institutions and 'people' (The Asia Foundation 2014). According to the survey report:

> When respondents were asked whether, in general, most people can be trusted, an astonishing 77% said that most people cannot be trusted. Only 21% believed that most people can be trusted. Social trust was lower in urban areas, where only 15% of respondents believed most people can be trusted, compared to 23% in rural areas. Levels of trust were also lower in the regions (18%) than in the states (27%). People in Chin State were much more likely to express trust, with 48% saying that most people can be trusted. (2014, 87)

When respondents were asked to rate the integrity of institutions, 'few were rated highly, and the large number of respondents answering 'don't know' underscores the general lack of knowledge about key governance institutions in the country' (2014, 90). Central rule of law institutions gained the lowest positive response:

> The police in particular received the weakest positive response—only 2% of the public felt the police had 'very high integrity'—and the strongest negative response, with 21% of respondents believing the police to be of 'low integrity,' and 10% of 'very low integrity.' The courts received similarly low positive ratings and high negative ratings, though more people said they did not know when asked about the courts (26%). (2014, 91)

The survey findings provide indications of the state of trust in Myanmar at the time of rule of law assistance activities that sought to strengthen rule of law institutions and enhance people's trust in them (outlined in Chapter 5). However, they are not surprising. Trust in institutions in authoritarian or totalitarian settings has been identified repeatedly as a rare phenomenon (Latusek and Olejniczak 2016).

Some scholars suggest that societies with weak institutional trust ('low trust societies' (Fukuyama 1995)) rely on inter-personal trust, and so that latter can be quite high. Latusek and Cook (2012, 514), for example, show how trust networks '[i]n societies that lack reliable institutional framework … may emerge to fill the void left by the demise of these institutions.' This is common, Latusek and Cook argue, in countries that have experienced totalitarianism. From their study of Russia and Poland, they find that 'the excessive reliance on close circles of family members and friends, combined with distrust of the authorities and the law, was forged by decades of experience with totalitarianism' (2012, 514).

Consistent with the survey findings in Myanmar, some scholars find a correlation between low institutional trust and low inter-personal trust amongst individuals in a society (see Khodyakov 2007 for an overview of such debates). Hardin (2001) suggests that authoritarian rule and policies to erode protection under the law can lead to a lack of confidence in both the state and other individuals 'because the state cannot be relied upon to prevent the worst possible outcomes from various joint endeavors and contractual relations' (2001, 513). According to Hardin, state policies to ruin relationships of trust are a good way to crush potential mobilization for opposition.[172] As a consequence, inter-personal trust is often low in authoritarian

[172] Also during colonial rule in Burma, British policies of 'divide and rule' were applied to impair trust between Burma's ethnic groups as a strategy to prevent mobilization for political opposition and resistance (Taylor 2009a).

settings -- which in turn is damaging to the accumulation of social capital, which stems from such trust, and crucial to democratic rule (Mishler and Rose 2001, Park 2012).[173]

Foreign practitioners concurred that trust was low in Myanmar and they perceived Myanmar to be a lot more 'distrusting' than other settings where they had previously worked. They experienced several levels of distrust in Myanmar society, including lack of trust in the legal system (Interviewee #4, 15 May 2014) and in the government (Interviewee #53, 25 September 2015) that for decades oppressed rather than served its citizens; as a result "people have little trust" (Interviewee #20, 30 September 2014, see also Denney, William, and Khin Thet San 2016). In addition to this, xenophobia - the fear and distrust of that which is perceived to be foreign or strange - was seen as deeply rooted and contributed to general views of distrust of 'foreign interests' (Interviewee #35, 19 November 2014).[174]

> The deep notions of distrust that still exist in many levels of Myanmar's society might not be obvious to newly arrived development actors who don't always recognize 'how things work here.' (Interviewee #3, 8 May 2014)

The comment above springs from a discussion I had with a foreign lawyer and rule of law practitioner who had worked in Myanmar for three years when I first met her in 2014 (a relatively long time when compared to many other foreign actors). She went on to explain how she was worried about staying in the country too long, because "The longer you stay here, the more you realise you don't know what's going on". The practitioner was referring to the distrust that she had experienced from government actors; from 'the locals' she had met in her work; and also from local NGOs that her organisation tried to cooperate with for purposes of rule of law assistance. In addition

[173] In Chapter 4, I illustrated how rule of law intermediaries accumulated social capital during military rule, capital that was later crucial for their ability to build trust with local counterparts.
[174] See (Callahan 2010) for a discussion about the sometimes sweeping understandings of xenophobia in Myanmar, and especially in relation to the military.

to a lack of personal and institutional trust, distrust towards foreigners and their interests were prevalent.

7.2. Historical Origins of Distrust in Myanmar

In Myanmar, colonial history and decades of isolation under military rule has contributed to distrust towards foreigners, which has affected relationship-building between foreign development organisations and local and national counterparts.

Nationalist sentiments started to become manifest as former military dictator Ne Win took power in 1962 and deemed it important to keep the country independent from foreign exploitation (Shwe Lu Maung 1989b).[175] Nationalism, xenophobia and isolationism aligned under the military's goal to protect the state from destructive elements and to preserve culture and tradition under its new socialist ideology (cf. Callahan 2010).[176] Under a new 'socialist banner, the new government could situate itself in an historical narrative of anti-imperial and anti-capitalist struggle while creating opportunities to target adversaries through new legal and administrative measures

[175] Nationalism became manifest already as Burma struggled for independence from British rule (Callahan 2004, 35) through an independence movement that was supported by the Burmese press, student activists, Buddhist monks, and emerging Burmese political parties (Hobbs 1947), like the *Dobama Asiayone* that came to gain popular support (Maung Maung 1989). Nationalist politicians, like U Aung San, U Saw and U Ba Maw, focused on issues that involved Burman representation on the Legislative Council and increased opportunities for higher education (Callahan 2004). Also colonial interventions of the legal sector (Cheesman 2015) raised nationalist and anti-imperialist sentiments. By the end of British colonial rule anti-imperialist and leftist thoughts (Trager 1959), seen as the opposite to British capitalist and liberal rule, were common in Burma (Taylor 2009a) and would come to influence political events in the decades to come. Also, to secure Burmese cooperation, during occupation, the Japanese had made promises of granting Burma independence (Hobbs 1947). However, dissatisfaction with Japanese rule was equally rampant (Taylor 2009, 224-227). The Anti-Fascist People's Freedom League (AFPFL) arose as an anti-Japanese resistance movement and after the war, came to emerge as the key political group in Burma (Silverstein 1977, 17). Callahan's suggestion is that the new elected leaders of Burma, however, had little interest in promoting liberal democracy as such was the system associated with the British colonisers. Rather they were embracing a nationalist, anti-imperialist, anti-capitalist and 'utopian socialist project' (Callahan 1998, 52).

[176] The Burmese Way to Socialism (1962) was published within a month after the 1962 coup. It mixes Buddhism, Marxism, and humanism to provide a state ideology which, Taylor argues, was intended to influence popular support for the state (Taylor 2009a). In 1963, as The System of Correlation of Man and His Environment (The Burma Socialist Programme Party 1963) came out it became the philosophical and intellectual foundation for the country's approach to society and socialism (Steinberg 2001).

couched in ideological terms' (Cheesman 2015, 80). Laws 'became vehicles to implement' the new 'radical and socialist developmental plans' based on this ideology and courts became both instruments and implementers (Myint Zan 2014, 160). Thus, the socialist ideology came to rest on many of the legislative and institutional reforms that had been, and were to be, undertaken and helped create the nationalistic and isolated nation the Socialist Republic of the Union of Burma was to become (Turku 2009).[177]

Increased isolation and xenophobia resulted in the forced departure of all public information libraries of embassies and private foreign aid organisations (Taylor 2009a).[178] Xenophobic propaganda became manifest (see e.g., Turku 2009). Through a Printers' and Publishers' Registration Act the state began to isolate its culture from external influences (Taylor 2009a). Books from the outside were screened for political content and domestic expressions of opinion were highly censored through the Press Scrutiny Board; contacts with foreigners were not encouraged and there was a restriction on imports of consumer goods (Steinberg 2001). Eventually, speaking with a foreigner could, and did, lead to jail terms (Skidmore 2003). According to Steinberg, the propaganda (that can still be seen across Myanmar today) was effective because the Burmese started to believe that foreigners were unsympathetic and held views that opposed those of Burmese society which were Buddhist and socialist rather than 'Western mainstream' (2001).[179]

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[177] In line with socialist ideology during the early days of Ne Win's rule an estimate of 15,000 firms and businesses were nationalised, including all foreign banks (Steinberg 2001), to be reorganised into People's Corporations (Shwe Lu Maung 1989). Trade and general merchants were nationalised and changed into 'People's Stores' under Trade Corporation No. 1. (Taylor 2009a). Eventually, these reforms led the commodities industry to collapse while the black market thrived (Shwe Lu Maung 1989). The Law to Protect the Construction of the Socialist Economy granted wide powers of arrest and seizure to prevent crimes disrupting the new economic policies (Taylor 2009a).

[178] Examples included the Ford Foundation, the British Council and the Asia Foundation, the Fulbright programme and British and American language training (Taylor 2009a).

[179] Ethnic minorities were consequently also seen as a threat to the national socialist and Buddhist unity Ne Win was promoting and not long after the 1962 coup individuals with Indian heritage were expelled (Steinberg 2001). Gradually, other minorities were marginalised as the majority ethnic group, the 'Bamar',

Writing about subsequent military rule, Skidmore (2003, 8) suggests that the regime maintained a promotion of "fear of the Other" as a temporal strategy to uphold control by fear. 'The other' could consist of a foreigner, traitor, or a neo-colonial presence whose threat one should be extra vigilant of. Through various strategies, the regime kept a tight grip of control on the population. For example, Military Intelligence (MI) managed to control the population through 'a range of national security laws enforced by a pliant judicial system' (Pedersen 2008, 152). Through an extensive surveillance network, (including the monitoring of telephones, mail and fax) and control of the population through local warden systems and police making sure people's moves were registered, a sense of societal distrust and fear was successfully sustained (Pedersen 2008, 152). Skidmore (2003, 16) concludes that trust eroded in society due to this heavy intelligence apparatus: 'The military dictatorship thus effectively manages to isolate Burmese people into small knots of friendship. The sense of isolation people feel is commonly expressed as ('they [MI] are always listening, you can't trust anyone')'.

Skidmore (2003, 15-16) provides a disheartening overview of the breakdown in interpersonal trust that was put in effect during military rule leading ultimately to what she describes as 'a nation of individuals unable and unwilling to trust each other'. Skidmore also suggests that regime strategies, such as the wiping out of currency and closing of banks, resulted in 'the complete lack of trust Burmese people have in their institutions' (2003, 16).

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was increasingly influenced by the idea that the country was full of potential enemies ready to destroy the union (Steinberg 2001). Burmese nationalism was further enhanced by the perception that ethnic minority groups wanted independence and that they maintained close ties to foreigners (Steinberg 2001). Burman-Buddhist nationalism continued to thrive in Myanmar after political transition in 2011 (Walton and Hayward 2014, Cheesman and Farrelly 2016). Horsey (2015) even argues that it increased after the country's 'opening' in 2011. He illustrates such increase with reference to the strong support of nationalist monks who led groups such as the organisation for protection of race and religion (*ma ba tha*) and a package of new legislation, which encompasses the regulation of polygamy, religious conversion, inter-faith marriage and unequal population growth (Horsey 2015, Looi 2015), and is intended to protect Myanmar Buddhism. A great deal of concern was voiced towards the passing of the legislation, due to its discriminatory features that violated international human rights (United Nations Office of the High Commissioner for Human Rights 2015).

Foreign development actors intervened in a setting where nationalist sentiments had prevailed for decades and where foreign influences and interests ('the other') were met with suspicion. In addition, they experienced the legacy of Myanmar having been cut off from the outside world as a result of decades of a rigid sanctions regime.

7.2.1. Foreign Sanctions

Western sanctions (applied to Myanmar from 1988) cut it off from both international ideas and advances in knowledge (Pedersen 2008). Possibilities to build linkages with actors in-country remained largely unexplored, due to this Western isolationist approach towards Myanmar (Pedersen 2008).[180]

It was the military regime's brutal practices and human rights violations that resulted in harsh responses from the international community.[181] Pedersen shows how the regime's disrespect for human rights and its refusal to hold elections, coupled with Western governments' agenda for a 'new world order' based on democratic governance, as well as international admiration for Aung San Suu Kyi (who had recently won the Nobel Peace Prize) resulted in one of the toughest sanctions regimes towards a country ever instituted (Pedersen 2008).[182]

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[180] Pedersen further suggests that when 'democracy' was elevated as the key objective of foreign policy towards Myanmar, and the following 'series of actions to isolate the military regime by denying it international legitimacy, aid, trade and investment' Myanmar became even more isolated (2008, 2-3).
[181] In 1989 Myanmar was brought to the attention of the UNCHR which appointed special rapporteurs to report on the situation in the country, however, these were only granted limited access to areas and places of interest to inspect (Silverstein 1997). Some of the main concerns involved the government's mistreatment of minorities, especially the use of extensive violence against non-combatants in the long standing civil conflicts in breach of the Geneva Conventions of 1949 to which the government was a signatory (Silverstein 1997).
[182] Grassroots campaigns also contributed to Burma's isolation as human rights activists and Burmese exiles worked together with (primarily U.S.) lawmakers to introduce laws targeting companies doing business in Burma, consumer boycotts, and lawsuits (Pedersen 2008). One of the early forces of human rights campaigns was the National Coalition Government of the Union of Burma (NCGUB) formed by the members of political opposition parties after the 1990's elections. With NGO status, NCGUB was allowed to speak about SLORC atrocities at the UN Human Rights Commission, was invited to visit European foreign ministries, and thereafter went to the US to lobby for support and recognition (Silverstein 1997).

In particular, the military's response to widespread protest to economic[183] and societal challenges[184] in 1988 had made the outside world conscious about the violent crack-down on protestors (Steinberg 2001).[185] The protests had escalated to unprecedented proportions as large parts of the general population and civil servants (including, for example, police officers and navy personnel) joined the protest (Pedersen 2008). They were further sparked by the violent crack-down by the military and security police (*lon htein*).[186] In effect a new military government, the State Law and Order Restoration Council (SLORC), took over power, 'predicated … on maintenance of the rule of law' (2009, 597).

West Germany and the United States terminated their aid programmes to show their disapproval of the new regime. Britain and the regimes' main donor, Japan, voiced

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[183] After a brief moment of economic growth during the 1970s, mismanagement of state economics was partly recognised, a new economic plan was introduced, and some relations with foreign economic actors were encouraged anew (Steinberg 1997). For example, Burma joined the Asian Development Bank and the Bank was invited back to the country (Steinberg 1997). However, the move towards a more open stance towards Western support of Ne Win's stagnating economy had come too late (even though international financial institutions, West Germany and the US had become significant donors) (Pedersen 2008). The 1980s again saw an increase in economic disparity. Having crippled the economy through various economic regulatory changes, the most infamous perhaps being the three cases of demonetization, Ne Win's rule was losing its grip (Steinberg 2001). In 1987 the UN classified Burma a Least Developed Country (United Nations Development Policy and Analysis Division 2015). Again, Ne Win announced the planning of political and economic reforms. However within one year, effective design and implementation of such plans were lacking and the need for reforms necessary to get the country back on track was, if Taylor is correct, realised too late for any effective action to be taken which subsequently led to an economic crisis that resulted in state failure (Taylor 2009).

[184] More specifically, Steinberg (2001) suggests, the event that led to the escalation of student riots in 1988 were the results of a fight in a local tea shop and the following brutal crack-down by the security police (*lon htein*).

[185] Some protestors had managed to leave to the Thai-Burma border, sometimes they joined insurgent groups, before they were arrested (Taylor 2009, 388). Steinberg (2001) estimates that 10.000 students (and other young people) fled to the China or India border, but even more commonly, to the Thai border. Many had left for the border areas with an illusion of foreign assistance and aid waiting for them, or as Lintner recaps, common beliefs among the students at the border were that the 'outside world was on their side' ready to provide the students with both ammunition and arms (1989, 197). Frustration and disappointment grew at the borders as students realised that there was little foreign assistance to be received and especially no support for armed struggle. Some returned to Burma where they were transferred through SLORC's many reception centres and made the national news as deluded youths who had now understood their mistakes and were back on the legal path, some more unfortunate, were arrested or killed (Lintner 1989).

[186] Lintner (1989) provides a detailed account of the events in 1988. He suggests that acts such as shootings, arrests, rapes, and suffocation of students occurred over several months which escalated both protests and the violent responses by the military to restore 'law and order.' Ultimately, students' voiced demands to denounce the government which resulted in more targeted massacres and casualties (Lintner 1989). As protests spread outside of the university campuses to the broader population, Steinberg (2001) estimates that up to a million people were demonstrating on the streets of Rangoon in 1988.

their wishes for a Burmese solution of democracy (Lintner 1989). As long as SLORC continued to avoid holding elections[187] foreign donors stayed out of the country because this was their condition for renewed aid (Lintner 1989).

Western governments limited their funding to humanitarian assistance for UN agencies and INGOs. Assistance (except minimal technical support) from international financial institutions had also been blocked for Myanmar (Pedersen 2008). While UN agencies had more room to manoeuvre than international financial institutions, after pressure from Western governments the UNDP's Governing Council imposed an 'extraordinary mandate', restricting its activities to specific areas where government interaction could be limited, relating specifically to activities in Myanmar (Pedersen 2008, 45).

Myanmar was also added to the U.S. Congress list of 'outlaw states' 'which under the provisions of the Foreign Assistance Act of 1961 mandates that voluntary U.S. funding for any UN agency be automatically reduced if the agency conducts programs in Burma' (Pedersen 2008, 45). Such moves put a great deal of pressure on UNDP, because their programmes were 'carefully scrutinized by Washington, thus forcing UNDP officials to balance their responsibility to the people of Burma against the risk of upsetting the U.S. government' (ibid). Another effect of these policies towards Myanmar was that it became the 'only country in the world where the first priority of the UN [was] to promote democracy, and receive[d] less international assistance than any other least developed country' (Pedersen 2008, 22).

The rigid sanctions regime towards Myanmar was only lifted after political transition in 2011. Thus, while other countries in Myanmar's vicinity cooperated with foreign actors on rule of law reform, Myanmar remained isolated and had little

[187] SLORC declared that free and fair elections would be held as soon as the peoples' standard of living had been improved, the transport network upgraded, and law and order had been restored (Lintner 1989). In Lintner's view, these criteria 'were sufficiently vague to allow for indefinite SLORC rule, should the military consider it necessary' (Lintner 1989, 193).

interaction with foreign knowledge and ideas up to 2011. The international sanctions regime significantly demarcates the pre-2011 conditions and those after transition began and foreign actors attempted interventions. The sanctions regime presents an additional factor that influenced the way foreigners were met with suspicion.

7.3. Distrust of Foreign-Funded Rule of Law Assistance

Myanmar's recent and long history of rigid isolation from outside influences contributed to challenges for foreign actors' attempts to promote a global rule of law model because political transition and foreign intervention brought in unfamiliar elements. Latusek and Cook (2012, 522) suggest that, in authoritarian contexts, 'if public life is based only on networks of trust, dealing with anonymous strangers is usually viewed as too risky'. Luhmann (1979, 20) maintains that a decision to trust requires previous experiences, present experiences, and reliance on future experiences. For newly arrived foreign development actors, accumulating such past and present experiences for future trust was difficult.

A 2012 report from the Local Resource Centre (a Myanmar NGO that seeks to enable better coordination between local and international implementers) asks how xenophobia and distrust matters for 'bridging the gap between donor community and local organizations in Myanmar' (Local Resource Centre). The report finds that interviewees felt that there was mistrust of foreigners but also that local organisations felt that they were being discriminated against and not trusted. The report concluded that such views held against both 'sides' led to damaged relationships between foreign and local organisations (2012, 20). This was also suggested by my interviewees. For example, one foreign practitioner reported that local counterparts stopped talking when she entered a room because they did not "trust her the same way they trust local staff"

(Interviewee #19, 25 September 2014). Another practitioner felt as if her national counterparts refrained from revealing significant information about their common interests (Interviewee #35, 19 November 2014).

The lack of trust sometimes led to damaged relationships. For example, a foreign practitioner described how a local partner organization "might have been worried that we asked too many questions" which eventually led to them becoming "very hostile … then I heard [that] one of the lawyers had told someone about us; [s/he said:] 'Why does it matter, they are foreigners, just make something up, write anything'" (Interviewee #3, 8 May 2014).

Such sentiments might also explain why some local organisations presented foreign projects as their own and without recognition of foreign involvement:

> They present it as the [organisation's] rule of law project, they talk about the [organisation's] approach to rule of law, it really got a bit much after a while, they did not recognize any international support (Interviewee #20, 30 Sep 2014)

> Someone told me that the [organisation] had applied to do [project activity] themselves based on our model which is a bit frustrating, they did not have to do much work with us but we did not want to compensate them, we do not want to bring money into it. (Interviewee #3, 8 May 2014)

Such instances, which I term 'reputational laundering,' can be interpreted as local organisations' strategies to launder foreign involvement in projects as they present them, in order to achieve better credibility and trust among local counterparts. They provide evidence about hostilities towards outsiders that prevail: so a focus on gaining trust thus becomes a central focus for foreign rule of law assistance actors.

7.3.1. Attempts to Gain Trust

A majority of respondents who were foreign practitioners mentioned issues of 'trust' as a constraining matter of central importance for their rule of law work in Myanmar (e.g., Interviewees #10; #53; #14): whether or not they were 'trusted' mattered a lot. One foreign practitioner explained that his organization had worked in the country for over 30 years (in the Golden triangle) and therefore "[We] are very trusted, that matters here, it's all about levels, many levels of trust - between civilians and the military and between the military and the police" (Interviewee #1, 6 May 2014). A 2012 report from the Local Resource Centre also stresses that local organisations in Myanmar viewed 'relationships with donors and INGOs as a matter of personality … [and] personalities and interpersonal communication style were seen as the determinants of successful funding partnership' (2012, 14).

While development institutions and discourse tend to be silent on the subject of interpersonal trust (Mawdsley, Townsend, and Porter 2005), and instead focus their efforts on building trust in institutions (see e.g., International Development Law Organization 2016, World Bank 2017), practitioners in the field were acutely aware of the relevance of building personal relationships and thus focussed much of their work on trust-building:

> We want to build trust with local NGOs. We explain our procedures so that they know why we are there. (Interviewee #32, 30 November 2014)

> It's all about relationships, who knows who and what. I am constantly trying to make links. (Interviewee #40, 9 December 2014)

> Things are done on the basis of personal relationships, not easy to build those. (Interviewee #54, 25 September 2015)

> It is difficult to gain trust as an outsider, I feel like I trust [our local staff] now [after three years in Myanmar]. (Interviewee #3, 8 May 2014)

> Trust takes time to build. (Interviewee #35, 19 November 2014)

> The local staff can agree when I raise issues because they feel comfortable with me, takes time to build such trust. (Interviewee #40, 9 December 2014)

> They are used to me now, I can go to the court and other places without any issues. In Myanmar, once they know you on a personal level it is all much easier. (Interviewee #31, 10 November 2014)

> I was brought in as an expert and they have to trust you; they are not fools these people. (Interviewee #1, 6 May 2014)

Gaining trust was experienced by international actors as a burdensome task because relationships with local and national actors were difficult to build. The difficulties were experienced at work as well as outside work. For example, when I visited the UN office, foreign and local staff sat in separate sections and foreign practitioners suggested that they seldom spent time with 'locals' in their free time. A foreign practitioner suggested that she attempted to spend time with her staff outside office hours, but that they did not seem to appreciate it when she invited them for dinner. A confounding factor might have been that the foreign practitioner brought the staff to Yangon's infamous 19th street, known for its heavy drinking.

Foreign practitioners described how it was particularly difficult to build relationships with the government actors who they sought as counterparts of rule of law development. They were often confounded by the political sensitivities they encountered in Myanmar that were coloured by lack of transparency and military style hierarchy structures (Interviewees #2; #3; #5; #8; #9; #31; #32; #48; #6). In this setting, intermediaries became two way translators of political sensitivities in local and national settings: 'upwards' because foreign practitioners 'wanted to ask about political things' but were concerned that they 'pushed it too far' (Interviewee #8, 22 May 2014; see also interviewee #48) and 'downwards' because intermediaries filtered messages from actors who were being asked questions deemed too political (Interviewee #8, 22 May 2014).

A variable that contributed to the distance between foreign and local counterparts was the location of key government ministries in Nay Pyi Taw: most rule of law practitioners who worked for major donor organisations live in Yangon (see also Verma 2011; Autesserre 2014). Still, even those who were placed in Nay Pyi Taw experienced that city's regulatory effects on hampering interactions. For example, comparing his work in Cambodia with Myanmar, a foreign practitioner who lived in Nay Pyi Taw explained that he found it "difficult to spend time with officials outside of work [to build up relationships]" (Interviewee #39, 22 November 2014). Another foreign practitioner said that it had taken her organization (which is a major multilateral donor) "two years to even have a conversation with government" (Interviewee #35, 19 November 2014). A local acquaintance of mine who worked for a foreign-funded initiative in another field of development explained how it had taken her one full year of friendly visits just to be able to initiate any substantive activities. The problem with a long-term approach was expressed by one practitioner: "We tend to stay a longer time, we get criticized that we are too slow, but time is the most important thing to make assistance effectively" (Interviewee #39, 22 November 2014).

7.3.2. Contract in Lieu of Trust

While foreign actors try to build trust with local counterparts they continue to bring in their learned models and they introduce formal contracts and technocratic donor systems of evaluation and control (described in Chapter 3), in part to compensate for trust deficits.

Strategies to build trust that are based upon economic assumptions are often incomplete (Stern 2008) and problematic in developing settings, where 'impersonal procedural rules' are met with suspicion because they 'operate without regard for the

person' (Rottenburg 2009, 62). The introduction of 'contract' is intended to replicated characteristics of 'trust', but it adds aspects of formality and regulation that might not be well received in a "country without contracts" (Interviewee #29, 23 October 2014). Thus, not surprisingly, the introduction of formal reporting requirements and even applications for funding from major donors did not always play well with local actors. A foreign programme manager, for example, suggested that when the time came for audits as part of compliance requirements, relationships between the donor and local NGOs often deteriorated:

> I feel awkward sometimes with compliance requirements, when we run robust audits on local organisations. It's been awkward, feels like Nazi concentration camp, like I am just following orders [even though I know it is damaging for relationships]. I don't want to brutalise a successful and well perceived organization. Afterwards, I have to re-establish those relationships. (Interviewee #20, 30 September 2014)

As stressed earlier in Chapter 5, local counterparts of rule of law assistance were bothered with 'donors' focus on money and monetary compensation' because, as one local intermediary claimed, "Myanmar people generally care very little about money" (Interviewee #17, 23 September 2014). A local intermediary concurred: "These senior lawyers don't care about money, they care about the personal connection, trust and respect is key in Myanmar, more than money" (Interviewee #14, 5 October 2014). Correspondingly, one foreign practitioner suggested that "Civil society don't trust anything that comes from official sources; many NGO's won't accept foreign funding" (Interviewee #35, 19 November 2014). Another foreign practitioner exclaimed with some irritation that, "You can't just bring money, they will say 'No' if they don't know you" (Interviewee #29, 23 October 2014).

In Myanmar personal relations and trust are seen as a priority, rather than establishing relationships based on formal institutions of contract.[188] Instead, local perceptions of the trustworthiness of intermediaries to be fair and honest in their dealings with local populations were cited by interviewees as a consistent predictor of relationships. Thus, in enhancing local perceptions of foreign-funded rule of law development initiatives, demonstrating cultural respect, interacting personally and informally, and performing duties consistently and professionally mattered more than generous grant giving and rigorous reporting requirements.

7.4. Intermediaries as Trust builders

A set of actors who stayed in Myanmar long-term (while foreign practitioners left for assignments in other countries), were known, and the culture they shared with local and national populations enabled them to take on the role as trust builders in instances where foreigners were unable to do so. Because it was "difficult to gain trust as an outsider" (Interviewee #3, 8 May 2014) intermediaries were utilized to "create trust and opening [sic] the doors" (Interviewee #5, 16 May 2014) and to "help … build relationships and respect" (Interviewee #56, 26 September 2015).

Trust in interpersonal relations is especially needed in 'complex' societies where trust 'serves to overcome an element of uncertainty in the behaviour of other people' (Luhmann 1979, 22). Intermediaries were primarily able to build trust because of interpersonal qualities in an environment coloured by institutional distrust and xenophobia. Rule of law intermediaries frequently defined 'trust' as 'knowing someone'

[188] See (Latusek and Olejniczak 2016) for a theory of how trust in 'low-trust societies' is developed through a four stage model where the starting point is relational trust, which then transforms into organisational trust, that contributes to institutionalised trust, and finally generalised trust (the latter transformation has been carefully studied by Braithwaite and Levi 2003).

or 'knowing me.' Similarly, Luhmann (1979, 39) makes such linkages to 'personality' central for interpersonal trust:

> Trust is extended first and foremost to another human being, in that he is assumed to possess a personality, to constitute an ordered, not arbitrary, centre of a system of action, with which one can come to terms. Trust, then, is the generalized expectation that the other will handle his freedom, his disturbing potential for diverse action, in keeping with his personality – or, rather, in keeping with the personality which he has presented and made socially visible.

Following Luhmann (1979) inter-personal trust consist of four conditions: mutual commitment; participants' knowledge of the situation they are putting trust in; the offer and acceptance of trust (not demand); and the earning of trust. In fulfilling these conditions, communication and action play an important role in building interpersonal trust because communication says something about the individual and her behaviour (ibid). The earning of trust, therefore, means that whoever wants to win trust must take part in social life and be in a position to build the expectations of the other into her self-presentation. Whoever presents herself from the outset as unapproachable distances herself, and therefore is in no position to acquire trust because she offers no opportunities for learning and testing (Luhmann 1979, 62).

Following such reasoning, it is no surprise that foreign rule of law actors have a harder time building trust in Myanmar when they are unapproachable -- often located in Yangon at a distance from government actors in Nay Pyi Taw and local actors in regional areas-- lack means of communicating effectively (they did not speak local languages), lack mutual commitment (foreign and local counterparts had different aims and objectives with rule of law reform), and lack knowledge of the exact situation local and national counterparts are putting themselves in by trusting in unknown foreign organisations' aims and objectives.

Rational and social explanations of trust are also applicable to the case of intermediaries (Hardin 2001, Braithwaite and Levi 2003). The former, suggest that trust

is largely based on expectations of reciprocity, while the latter suggest that trust can alternatively be based on social connectedness or perceptions of shared identities, characteristics, values, or experiences, or open and respectful communication. Perceptions of intermediaries' degrees of cultural understanding, receptiveness to local input and social connectedness are most powerfully associated with social explanations of trust. Because of their familiarity to a wide range of people (outlined in Chapter 4), we can suspect that they were trusted because they had provided some reciprocity in the past.

A reliance on networks and close circles of friends can be seen as a result of societies with little trust in institutions (Latusek and Cook 2012). We see this in Myanmar when intermediaries are primarily connected through 'friendship associations' and invite people they already knew to rule of law events (Interviewee #53, 5 October 2015; see also Interviewee #14, 5 October 2014 and Chapter 4).

Intermediaries themselves suggested that it was because of their trustworthiness and respect that people 'come to them' (e.g., Interviewee #14, 5 October 2014; Interviewee #42, 5 November 2014). When we discussed success factors in his work for a foreign organization, one intermediary, with a big smile on his face, confidently told me that local counterparts:

> know me, that means, they trust me … locals do not trust foreigners, they know about foreign policy and that donors have their own interests [however] they trust the local staff a bit more and also me even if I have a political background it does not matter because they like me, that's how our society works … they [local counterparts] … come to us. They say 'we respect you'. (Interviewee #14, 5 October 2014)

Another intermediary similarly suggested that, "I have trust from the [local] organisations" (Interviewee #42, 5 November 2014). Intermediaries who were themselves foreigners suggested that it is possible to gain some level of trust through a continued illustration of alignment with the Myanmar 'side':

> We are in a very good position between the Myanmar and the [donor] side, we can choose our standpoint in accordance with the situation, we are using our positions as mediators, we are always situated in the office so we feel more attached to the Myanmar side, we always fight [the donor], that might be one of the reasons the Myanmar side trust us. We don't report the whole thing, like personal relations with officials within the ministries or which people don't get along. These are important aspects that affect the work, relationships between people. (Interviewee #39, 22 November 2014)

The practitioner speaking in this way above happens to be Japanese. A practitioner in a similar position, but attached to a Western donor, expressed his role by contrast as one where he represented 'the international community' (see also Autesserre 2014) and explained that he did not feel as if he was able to build any significant relationships with government actors. Nicholson and Low (2013) and Nicholson and Hinderling (2013) find that Japanese donors were often better at relationship-building with rule of law counterparts in Vietnam and Cambodia. While my data from Myanmar provides only one example, it does hint at the possibility that an actor like JICA, that invests in long-term engagement (Interviewee #39, 22 November 2014) and has staff that stay with their assignments for extended periods, has potential to be more successful than donors with foreign staff who readily jump from assignments to other more exciting settings.

The role as a trusted intermediary also means that intermediaries are entrusted with information that foreign counterparts, on the one hand, and local or national actors on the other, would not reveal to each other. Two intermediaries explained:

> People tell me things and ask me not to tell them, because they trust me so much, I should be as honest as possible (Interviewee #55, 26 September 2015)

> Sometimes there is a space we should not open up, for both sides, it depends on the issue. But it is good to keep confidence sometimes (Interviewee #27, 7 October 2014)

Similarly, a local intermediary explained that, "People tell [her] things they would not tell each other" and that in some cases she sees "A need to breach confidentiality" (Interviewee #11, 14 May 2014). Her foreign employer, however, was confident that she, in her role as a 'national staff' actor:

> … will tell us everything the [counterpart] tells her. I think it would be different if she had had relationships with them before. But now, we built up the relationship with her first. To be honest, I do think that the [counterpart] will ask them [local staff] things about us [smiles] that they would not ask us directly. (Interviewee #25, 3 October 2014)

Such different perceptions of trust, and who has the strongest relationship, again hint at foreign practitioners' understanding that inter-personal trust was a key factor for successful rule of law development cooperation.

However, intermediaries' roles as trust builders were not without complications. The same local intermediary as cited above, for example, was concerned that he "Get some criticism here, people think that if your project got 6 million it means that you personally got the money, they will tell me, 'Hey you're rich now!'; They don't trust foreign-funded organisations and they don't like it" (Interviewee #14, 5 October 2014). Because of his political interests (such as those described in Chapter 4) the same intermediary exclaimed that because of the distrust towards foreign organisations, he "Had to get out of this business if I want to be in politics. They don't think any foreign organisations do it only because of good will".

The intermediary role was further compromised as, on the one hand, she is expected to embody and build trust in a setting permeated by distrust while, on the other hand, she is responsible for mediating the conflicts that arise when counterparts do not understand each other or when they had different perspectives and objectives (see also Chapter 5). One intermediary explained the complexity of his role this way: "I am a facilitator. They trust me. Sometimes hostilities are very big, I am sometimes a mediator" (Interviewee #14, 5 October 2014).

7.5. Conclusion

In this chapter, I illustrated issues of 'distrust' that exist between local and foreign counterparts of rule of law assistance in Myanmar and analysed the role intermediary actors take on to mediate such distrust. I outlined how notions of distrust in Myanmar have historical roots that can be explained in relation to past regime practices that boosted Buddhist nationalism and xenophobic sentiments. Foreign development actors thus intervene in a setting where nationalist sentiments had prevailed for decades, and where foreign influences and interests and outsiders are met with suspicion. This situation is exacerbated by Myanmar having been cut off from the outside world as a result of the decades of a tough sanctions regime. We can assume that this is an additional factor that influences the way foreigners are perceived.

Whether issues of distrust are more prevalent or particularly evident in the rule of law field in Myanmar is not considered in this study; I make no comparisons with other fields of international development in Myanmar. However, when reviewing the combination of the general distrust that exists towards law and justice institutions, foreign interests, and intervening actors, it could be hypothesized that foreign rule of law development attempts face particular challenges, especially if they risk boosting the power of already distrusted authoritarian institutions (Moustafa 2008).

A lack of trust was identified as a key constraint on foreign practitioners' experience of rule of law work in Myanmar: whether or not they were 'trusted' mattered a lot to them. Because trust is perceived as a prerequisite for successful rule of law assistance, building it or finding someone who can serve as a trusted link becomes a focus of donor efforts. Practitioners in the field are acutely aware of the relevance of building personal relationships and thus focus much of their work on trust-building. Gaining trust was, however, experienced by many of my interviewees as a comparatively

burdensome task because relationships with local actors were difficult to build. Also, because foreigners lack prior demonstrated trustworthiness, known actors such as intermediaries instead take on a role as important trust builders.

Intermediaries are primarily able to build trust because of their interpersonal qualities. However, intermediaries' roles as trust-builders are not without complications; they have to navigate perceptions that they are too close to the 'foreign' side, which could be damaging for their reputation. They also have to mediate conflicts because they are often trusted with important and confidential information. Perceptions of the trustworthiness of intermediaries to be fair and honest in their dealings with local populations were seen as a consistent predictor of relationships. Thus for foreign-funded rule of law development initiatives to enhance positive local perceptions of their work, demonstrating cultural respect, interacting personally and informally, and performing duties consistently and professionally, mattered more than generous grant-giving.

Chapter 8. Vernacularizing Rule of Law in Myanmar

At one of Yangon's many Japanese cafés, I caught up with Aung Ko, a local intermediary, for a follow-up interview in late 2015. As in my previous conversations with him, I asked how he understood and translated 'rule of law'. I remembered that Aung Ko often liked to discuss the importance of rule of law and that he had told me previously that he considered 'accountability' an important aspect of this, because he believed in the importance of 'doing good' and 'showing loving kindness' (*metta*). At the time of this meeting, he was three years into his work as an intermediary for foreign rule of law organisations and Aung Ko was more frustrated about the topic of rule of law. He explained that he preferred not to use such terminology. The reason? "You can't talk about rule of law when the laws we have are so outdated like they are now … I don't want [rule of law] in Myanmar". Instead, Aung Ko told me that "I say rule of *fair* law … I talk about the role of civil society in Myanmar, legal reform, better modernized law, modern values; I can't say 'rule of law'".

Aung Ko's frustration exemplifies some of the issues that arise when foreign actors attempt to translate a global model to a setting that lacks the institutional and cultural rationales for successful adaptation. In this case, the rule of law model's rationale, (as I detailed in Chapter 3) which contributes to its 'substantive' characteristics (Tamanaha and Krygier 2005) has stayed behind. Instead, when the model arrived in Myanmar, it has been understood as a procedural concept, influenced by existing political and societal understandings. As a consequence, in his position as intermediary, Aung Ko draws on his own traditions and experiences to adjust the rhetoric of the global model to better fit local circumstances.

The history and dynamics of authoritarian politics and military rule in Myanmar have had a profound impact on the way rule of law has been adopted and appropriated at national and local levels. Different social realities have been produced from those originally intended at the international level. What results from such transformations are newly-emerging forms of rule of law which differ from the intended model. Not surprisingly then, in attempts to translate the rule of law model to Myanmar, we can detect friction in those flows. The key actors in this study, rule of law intermediaries, are the ones responsible for conveying ideas from one context to another, adapting and reframing them from the source context to one that resonates with the new location.

In Chapter 3, I suggested that development models are translated because they do not diffuse automatically but need to be adapted, 'conveyed, carried, picked up, called for and interpreted' by individual or collective actors in their new setting (Behrends et al. 2014, 2-3). In this chapter, I draw on legal anthropologist Sally Engle Merry's (2006) framework of 'vernacularization' – 'the process of appropriation and local adoption of globally generated ideas and strategies' (Levitt and Merry 2009) to analyse how intermediaries as actors in 'the middle' (Merry 2006) vernacularize the rule of law model in Myanmar. I describe and analyse the ways in which intermediaries strategise to accomplish such vernacularization through an ethnographic account of insider and outsider perspectives.

The research question this chapter seeks to answer is: How do intermediaries translate the global rule of law model in Myanmar? The purpose of asking such question was in essence to detect how intermediaries influence rule of law assistance, which is the main inquiry of this thesis. The data for this chapter includes personal observations from the field in Myanmar, in-depth qualitative interviews, and documents shared by actors in the field. I collected data that mentioned 'translation' through interviews with foreign practitioners, where I asked about what they perceived to be the main

challenges of working with rule of law assistance in Myanmar. A central challenge that they experience includes the 'traditional' (i.e., semantic) difficulty of translation. However, they were also troubled by their own reliance on intermediaries as translators and the difficulties they experienced in relation to the strategies applied by intermediaries when they operated as translators.

I also report on intermediaries' insider perspectives (gained through interviews, observations, and informal conversations) on how they actively vernacularized rule of law and the challenges they faced in doing so. Such exploration reveal that intermediaries frame rule of law in ways that are more suitable for the national and local settings, in the process reframing the global rule of law model to match existing local ideologies and understandings.

Before I turn to an analysis of vernacularization as it has played out in Myanmar, the first part of this chapter highlights the main translation challenges rule of law practitioners experience. Their experiences of translation confirm my working proposition that it was necessary to apply a broad anthropological understanding of translation in order to understand its dynamics in the Myanmar setting.

Thereafter, I present intermediaries' insider perspectives of how they translate the global rule of law model in Myanmar. This type of vernacularization is a core part of rule of law assistance and diffusion (Berger 2017, Zimmermann 2017), although it has seldom been analysed in relation to rule of law assistance or considered by rule of law reformers (Channell 2006, 148). An enhanced knowledge of processes of vernacularization provides insights into how rule of law interventions can happen in dialogue with end users, and thus better fit local context.

By analysing the strategies intermediaries use, this chapter also concludes that intermediaries become powerful in their role as translators. Intermediaries do not just mobilize their contacts and use their local language skills – they also buffer

conversations in which the speakers are mutually incomprehensible and substitute content where they consider this necessary. This again highlights that the choice of intermediary is important — as is understanding their motivations (as outlined in Chapter 4) and the pressures that they experience, because all of these influence their performance.

8.1. 'The concepts can go totally upside down': Issues in Translation

In Myanmar, 'translation' happens in the direct communication between rule of law counterparts; through research where foreign actors contracted local researchers to help them make sense of the new setting; and through strategies to disseminate 'foreign' material to local and national actors (e.g., producing handbooks and cartoons, or digital media, such as a TV show). In the latter case, one NGO for example, wrote handbooks in 'laymen terms, easy to understand Burmese' (Interviewee #16, 22 September 2014). Another INGO translated 'international rule of law documents' and handed them to local groups as part of their rule of law promotion strategy (Interviewee #29, 23 October 2014). Translation of the rule of law model also happened through attempts to develop cartoons (Interviewee #3, 8 May 2014; interviewee #16, 22 September 2014). Oral translation (interpreting) took place at conferences and workshops that became important sites of 'mediated communication' (Levitt and Merry 2009). Within the confines of these meetings, intermediaries translated ideas and messages of rule of law (Interviewee #24, 14 October 2014; Interviewee #55, 26 September 2015). Foreign practitioners experience such events of translation as a main challenge in their work on

rule of law assistance in Myanmar[189] and many suggested that much of their work involved aspects[190] that were "lost in translation" (Interviewees #8; #29; #39; #40).[191]

My own experience tallies with this perception: I was confused as I attempted to enter a local court in Yangon, when I was stopped by two security guards who blocked the entrance. They looked approachable, sitting on their small rugged plastic chairs. Behind them I could see a decaying colonial building and frantic activity going on. The old wooden staircase looked rotten, but at the same time seemed to majestically move lawyers, clients, the accused, police and sundry other people from the ground floor up to their hearings. I asked if I could enter, and both guards looked at me, one slightly smiling, the other, not so much. In reply, one shouted: "No problem!" As I was about to enter, the other shouted: "No, problem!" and I thus stopped. Slightly confused, I asked again if I could enter and got the same answers. I interpreted this to mean either "There is no problem for you to enter" or, "No, you cannot enter -- as that would be a problem". After asking one more time with the same outcome, I decided to withdraw in order to avoid the 'problem', for both myself and the guards.

This is a comparatively simple example of the type of misunderstandings that arise frequently amongst individuals who do not speak the same language. For rule of law assistance actors in Myanmar, translation challenges exclude them from key conversations and information because of their linguistic handicap. Foreign rule of law actors have problems accessing key documents (Interviewee #2, 7 May 2014); meeting

[189] Expressed by at least 20 of interviewees that were foreign practitioners, e.g., interviewees #3; #8; #10; #5; #2; #4; #6; #16; #18; #29; #39; #54; #55; #53; #40; #7.
[190] For example, the contents of a meeting or discussions at a conference (Interviewee #8, 22 May 2014). In relation to official documents and their translation, one foreign practitioner suggests that English language translations of official documents (in this case she was discussing the national land use policy) 'is not reflecting the Myanmar version' but rather 'appeases the foreigner,' for example, because 'the English version mentions women but the Myanmar doesn't' (Interviewee #40, 9 December 2014).
[191] See also, Thomas Fuller (19 July, 2015), 'Those Who Would Remake Myanmar Find That Words Fail Them' and a reply by Tamas Wells and Matthew J Walton (1, September 2015), 'Is democracy really lost in translation?'.

counterparts (Interviewee #5, 16 May 2014); and communicating with local staff (Interviewee #4, 15 May 2014). A foreign programme manager explained:

> Language is an issue and translation is a big problem. For example, the drafting of the [deleted] law, I supported the drafting process that became such a mess, no one know if concepts are still there or lost in translation. Myanmar and English are so different from each-other. How do you for example translate 'accountability' or the many jargon words you use? They just don't translate very well. When I contact people they are shy to communicate in English. If you want to hire a translator - many are crappy freelancers - you don't know what they are translating. The concepts can go totally upside down. (Interviewee #5, 16 May 2014)

A foreign consultant similarly suggested that:

> It is surprising how limited the English language skills are among the local people, and I don't mean anybody; I mean people with education and quite important positions within NGOs, political parties etc. Translation is very important for rule of law implementation but it is not easy to deal with, they don't know English well enough. This goes well beyond translation problems. Burmese is a difficult language to translate, it's a constant problem. (Interviewee #18, 24 September 2014)

'Language' was often highlighted as an obvious reason that translation was difficult. Primarily it was the low level of English proficiency among local and national counterparts[192] (discussed in Chapter 6) and the lack of competent professional interpreters (Dolinska 2017) that foreign practitioners mentioned as key issues. Autesserre (2014, 117-119) provides daunting examples from conflict zones where serious atrocities were able to proceed because peacekeepers were not linguistically able to understand local calls for help (see also Coles 2007). Autesserre also discusses the misunderstandings that arise between development counterparts that do not share the same language and 'cultural codes' which affect cross-cultural communication with detrimental effects for development assistance. As we saw in Chapter 6, in Myanmar the cultural notion of *ana/ana-de* is particularly difficult for foreign development practitioners to grasp. For example, government officials' tendency to easily agree to the rule of law assistance offered often resulted in donor disappointment when action was slow to follow. Foreign practitioners sometimes believed that the abundant acceptance

[192] Few, however, mentioned the inability of foreigners to speak local languages.

of assistance was used as a way of foiling development attempts (e.g., Interviewee #2, 7 May 2014, see also Carruthers and Halliday 2006).

The comments above from interviewees indicate the confusion that arises when foreign practitioners attempt to translate concepts that circulate in global development discourse to a different linguistic setting. They highlight the ambiguities of translation – most evident when things are not going the donors' way and their interventions have resulted in unintended consequences (Behrends et al. 2014).

Translation issues in Myanmar stretched beyond semantics. A broader stance toward translation is examined by anthropologists, who stress translation as a process that encompasses displacement, drifting, invention, mediation, and linkages that involve 'negotiations, intrigues, calculations, acts of persuasion and violence' (Callon and Latour 1981, 279). Such broader understandings of translation 'go[es] beyond a simplistic notion of what translation really 'is' as 'a lexical notion of translation makes very little sense, and the anthropological problematic in this domain has more in common with semiology than with linguistics' (de Sardan 2005, 171). Applying this broader definition, I turn next to how the rule of law model was locally reinterpreted in light of political and social realities in Myanmar.

8.2. Local Reinterpretations: Rule of Law as Law and Order

The rule of law model has been appropriated by local and national actors in Myanmar against the backdrop of Myanmar's political history (Myint Zan 2014) and local preconceptions of the term as meaning 'law and order' or 'rule by law' (Cheesman 2015).

Cheesman (2009) provides insights into the way the military regime's strategies and practices in Myanmar came to transverse the existing – and amply functioning -- rule of law institutions that remained from colonial rule. Thus, eventually the Myanmar

justice system became subsumed into one that focused completely on providing and maintaining 'law and order' (*ngyeinwut-pibaye*) rather than substantive and procedural rights. However, a language that stressed 'rule of law' (*taya-ubade-somoye*) was applied in official discourse in order to justify ruthless actions to provide law and order (Cheesman 2015). Consequently, after decades of such strategies, the meaning of 'rule of law' had become transformed (ibid).

Adaptation of the term had already began when General Ne Win took power in 1962 (Cheesman 2009). Coercive legal and regulatory reform had been a key feature of British colonial rule and Ne Win did little to improve progress towards a justice system that was based on the premises of actually providing 'justice' (for some interpretations of that concept in Myanmar, see Denney, William, and Khin Thet San 2016). Instead, judicial and executive powers were placed in the hands of Ne Win and the parliament was suspended (Taylor 2009a). At regional levels, military-led administrative bodies took over responsibility from state governments. As a result of these reforms, a system arose that reduced 'the rule of law to the process of enacting and enforcing law' (Cheesman 2015, 81). That is, law that was, and remains, as Aung Ko suggested in the introduction to this chapter, both outdated and repressive.

The idea of 'rule of law' as a substantive concept was further appropriated when a new configuration of military leaders took power in 1988 (Cheesman 2009). SLORC, as Cheesman, puts it, 'declined to adhere to any coherent set of principles' and instead 'conflated the rule of law with the 'law and order' of its title and pronounced this to be its objective' (Cheesman 2015, 101).[193] SLORC's various changes to the law and justice system caused observers to denounce its regime as one of persistent arbitrariness,

[193] Still, Myint Zan has pointed out that during SLORC rule, within the confines of the National Convention, issues including the separation of powers and judicial independence were once again discussed 'after being neglected and treated with contempt' to a certain extent (Myint Zan 2000, 30). However, as with rule of law rhetoric, this rhetoric might rather have been 'illusive, if not deceptive' (Myint Zan 2000, 37).

disregard of procedure, and one that protected the powerful rather than weak (Pedersen 2008).

As a consequence of past appropriations of the term rule of law by Myanmar's ruling military regimes, to this day, the term 'rule of law' is little understood in the country as a concept that connotes substantive rights (Cheesman 2009, 613). A foreign consultant suggested, with evident fatigue, that while there was a constant discussion about it and that "Rule of law is everywhere", due to its historical legacy, "[It] absolutely translates as law and order, not just linguistically but also conceptually" (Interviewee #35, 19 November 2014). Such understandings stretch from local to national levels:

> The government does not want to do it, they have no concept of duty to the people, the government is a distant military force. It is quite difficult then to organize this rule of law idea. The judiciary is the last place you go to solve a dispute, everything is local justice. (Interviewee #29, 23 October 2014)

This poses a challenge for foreign rule of law practitioners when they arrive in Myanmar, because when they speak about 'rule of law', it is heard as 'law and order', by both local and national actors, and even by some local lawyers. A foreign programme manager explained: "You can meet government representatives who are very enthusiastic about rule of law, but then you realize he is talking about law and order" (Interviewee #29, 23 October 2014). Such appropriation of the concept (Merry 2006) implies that foreign and national development counterparts come together around a common rule of law 'metacode' (Rottenburg 2005) and achieve consensus about what was being discussed and agreed upon, because the actors around the table believe that they are discussing the same thing. Yet 'rule of law' for one party means 'law and order' to the other, In this case, the programme manager, himself comparatively immersed in Myanmar society, language and culture, discovered that the 'metacode' was in fact a 'cultural code' already in place in such meetings. In many cases, however, the realisation will not dawn until agreements are about to be implemented: "They say they understand the rule of law, but when it comes down to practice you see that that's not the case,

even if the law on paper is OK, practice is so different" (Foreign programme manager, Interviewee #40, 9 December 2014).

Local actors were also described as understanding the concept differently from the meaning intended by their foreign interlocutors. A senior American lawyer reflected on his experience meeting local activists around the country:

> Most people have no idea of what they are talking about, or they have a very narrow focus of their understanding of it. They know it is important but can't go very far in expressing an understanding of what it is. The Burmese have for 60 years been so mistreated by the military and they are very sceptical. Oh boy, will they raise questions if you tell them that a law should be applicable to everybody, the military, government etc. -- not a single person says that they believe in this. I would say they are starting below zero in developing it. You have to try to work with those factors to bring a correct picture of rule of law. (Interviewee #18, 24 September 2014)

Another foreign practitioner complained, "People say: 'Yes we agree - the rule of law - the people should obey the laws' … People always roll their eyes, the term doesn't mean that much, it can be used to hide behind" (Interviewee #48, 10 October 2014). The demeaning tenor of these remarks is part of a foreign actor narrative that people in Myanmar do not understand a concept like rule of law. Yet this ignores the potential of other ideas with roots in Myanmar culture and society, for example Buddhist values, (see Walton 2016) and with links to the substantive aspects of rule of law rights foreign actors wish to promote. Only one respondent, who happened to be one of the few foreign practitioners from a non-Western country, suggested that "People might know what the rule of law means, but they express it a bit differently - accountability is often expressed as being important" (Interviewee #7, 21 May 2014).

The tendency of foreign practitioners to assume that everybody was talking about the same thing might seem surprising, considering that one would expect them to have experienced similar challenges in other developing settings. However, as this chapter illustrates, the slow process it took for foreign actors to realise their mistakes in

communication hints at the fact that they were ill-prepared for executing rule of law assistance in an authoritarian setting.

Local staff who worked for foreign rule of law organisations was also described as lacking knowledge and understanding of the rule of law. A foreign practitioner explained how, when she worked on a project that attempted to illustrate the rule of law in an accessible way, it became evident that her staff 'Had no idea of what we were talking about - the concept was not the same, they referred to the law books, we ended up not doing the [project]" (Interviewee #3, 8 May 2014). A foreign programme officer exclaimed: "They really don't get what the rule of law is, even my staff in Yangon come to me and say – 'We really don't get this, please explain it to us"' (Interviewee #35, 19 November 2014). 'They' in the quote refers to a very broad category -- everyone in Myanmar -- and the suggestion was supported by the evidence that 'not even' the local staff, who worked on rule of law issues, understood the model. I got a sense in this discussion that the category 'local staff' (those who did work on rule of law assistance) was used to stress the foreign practitioner's emphasis that *really* 'no-one' understood what the rule of law meant.

Foreign practitioners, however, reserved their deepest surprise for their experiences with local lawyers, who they claimed did not understand what the rule of law is. The quotes that follow exemplify their astonishment:

> Their understanding of the rule of law as we know it and how things should work is just so different. I mean, somewhere in their minds they seem to know that things are different in other places, but for them they don't know any other way. A lawyer is someone who knows who to pay and how much. I asked a lawyer if the judge was fair and he told me that the judge was very fair as he only accepted 'little money.' It's like they know things should be done in other ways but they are so used to their system. (Interviewee #2, 7 May 2014)

> I had lots of contact with local lawyers. There are problems. I was very pleased of the interest of local lawyers to learn about rule of law. You would sort of think that a group of lawyers in Yangon would be quick to pick things up, but it's not. (Interviewee #18, 24 September 2014)

> For many the reference point is how it was in the 1950s - especially lawyers want it to go back to that. Terminology like 'breach,' 'violation,' 'breaking the law,' is not understood outside the language of criminal law. If you say 'break the law' people expect a punishment. (Interviewee #35, 19 November 2014)

The fact that lawyers understood rule of law differently from their foreign counterparts is not surprising for anyone who has invested time in some background reading about how the Burmese legal profession was marginalized by government strategies during military rule.[194] Nevertheless, foreign practitioners arrived in Myanmar with the perception that institutions there (like the legal profession) would perform in ways that were familiar to them, but would of course be in need of some 'development'. When I arrived in Myanmar in early 2014, foreign practitioners seemed acutely aware of the fact that they were missing some important pieces of the puzzle of the state of rule of law and legal institutions in Myanmar. Unable to access academic writing (of which there was plenty at the introductory level in both English and Burmese) and unsatisfied by the various donor assessments characterised by sweeping generalisations such as 'There is no rule of law in Myanmar' (see e.g., New Perimeter, Perseus Strategies, and The Jacob Blaustein Institute for the Advancement of Human Rights 2013), they were keenly interested in a (then) unpublished thesis by Myanmar scholar Nick Cheesman.[195] Upon hearing that Cheesman was, in fact, one of my thesis supervisers, they repeatedly asked if I if could 'get it' for them -- as if we were bargaining in the marketplace.[196]

While we find explanations of practitioners' lack of preparation and the disregard for country knowledge in the larger structures of the development field (Simion and Taylor 2015) they are too important to continue to disregard. When

[194] See Chapter 5.
[195] Published as book in 2015, see, Cheesman 2015.
[196] People who had obtained a copy of the thesis (presumably from the author) were mentioned with awe and envy.

foreigners could not demonstrate sufficient grasp of Myanmar history and political and legal context, much less the local 'mentality', their technical legal expertise was disregarded (local lawyer, informal conversation, December 2014). Ultimately, misinterpretations of the country context poses risks of unintended consequences that may subvert the intentions of development promoters. In the worst case, they can result in development promotion that strengthens authoritarian characteristics of rule of law institutions (Moustafa 2008) rather than fosters the values and ideals rule of law promoters wish to convey.

Next, I proceed to a detailed explanation of how intermediaries became central translators of the rule of law model to local and national levels.

8.3. Intermediaries as Translators

A significant part of intermediaries' work involved translation activities (Interviewees #8; #9; #7; #39; #53; #60, #61). Taking on such tasks is a well-recognized intermediary trait that links to their skills at bridging gaps and communicating between different cultures (Szasz 1994; Richter 1988; Silverman 1965; Boissevain 1974; Paine 1971); they 'master the linguistic and cultural codes' that facilitate the translation between local and development languages and worlds (Bierschenk et al. 2002, 21-23; Merry 2006; De Sardan 2005). Intermediaries are appreciated by foreign employers for being "really helpful in translating" (Interviewee #3, 8 May 2014), and for their ability to "take the foreign concepts and make it make sense in Myanmar" and for "point[ing] out when certain words etc. don't make sense" (Interviewee #31, 10 November 2014).

In Myanmar, intermediaries adjusted and simplified the rule of law model so that it would make sense because it was perceived as too complicated (Interviewee #22 and #23, 2 October 2114). An intermediary explained how the term was seen as "Counterproductive -- it disempowers people rather than empower[s] them, as they feel

confused. You have to localize the concepts and bring them to people's daily lives" (Interviewee #26, 6 October 2014). Some intermediaries adopted a strategy of listing Myanmar words with lengthy explanations to explain rule of law-related concepts when existing words in Myanmar language failed them (see also Wells and Walton 1, September 2015). A foreign programme manager explained how the intermediary often had to write a 'list of things' with 'a set of things involved' that related to the English word used (Interviewee #3, 8 May 2014). When I visited the national parliament in Nay Pyi Taw in 2014, I passed a wall where several English words that I recognized as typical development lingua (e.g., 'local ownership') were accompanied by lengthy explanations in Myanmar script.[197]

8.3.1. Rule of Law Adaptation and Adjustment

Significantly, however, because the rule of law model was appropriated by local and national actors to signify 'law and order' or 'rule by law', intermediaries became responsible for creating different interpretations and steering away from such preconceptions in their translations. Merry would describe such processes as 'vernacularization' of global ideas that are adapted to local institutions and meanings, which she argues, is necessary in order for global norms to be effective at local levels (Merry 2006a, 39). Such 'translation' takes place in a 'middle' space where global models are conveyed to local and national levels through intermediaries. Therefore, translation processes involve considerable agency from intermediary actors (2006b). Merry provides a detailed account of possible variations of translation, detailed in the table

[197] International IDEA later published an 'English-Myanmar Glossary of Democratic Terms' that follows a similar model because 'The glossary is more than just a translation of key terms. In some cases where no direct translation into Myanmar exists, the glossary provides a brief explanation or contextualization of concepts and, where possible, draw links to Myanmar's existing legal system and traditional governance concepts' (Institute for Democracy and Electoral Assistance (International IDEA) and Local Resource Centre 2015, 3).

below.[198] 'The symbolic dimension of vernacularization is 'indigenization,' which implies that 'shifts in meaning' takes place when 'new ideas are framed and presented in terms of existing cultural norms, values, and practices' (Merry 2006a, 39). Merry also theorizes the themes of 'appropriation,' when ideas, programmes, and interventions developed in one setting get replicated in another, and 'translation,' when the structure and rhetoric of programmes or interventions are adjusted to local circumstances (Merry 2006b, 135).[199]

Variations of Translation according to Merry (2006)

Vernacularization	Ideas that travel to the local from the global transnational arena are adapted to local institutions and meanings	The structure and rhetoric of programmes or interventions are adjusted to local circumstances	**Translation**
Indigenization	Global norms are framed and presented in terms of existing cultural norms, values, and practices	Ideas, programmes, and interventions developed in one setting gets replicated in another	**Appropriation**

Intermediaries repeatedly mentioned the need to distract listeners from language that mentioned the misinterpreted term 'rule of law' (Interviewee #26, 6 October 2014). Instead, they emphasised labels such as 'justice' and 'just' (Interviewee #24, 14 October 2014), 'fairness' (Interviewee #14, 5 October 2014), 'accountability' and 'trust,' because those were terms that they perceived as "easier to talk about" (Interviewee #53, 5 October 2015). Such adaptations of the term are important to recognise because they

[198] Although 'These differences are a matter of degree' and 'imported ideas and institutions may be rejected outright' (Merry 2006, 44)

[199] Also Halliday and Carruthers (2009) suggest different types of outcomes when global scripts are translated to the local level. They include *acceptance* (e.g., direct adaptation of a UN Model Law or the ratification of a Convention in its full), *adaptation as replication* ('when a global frame is translated into local guise without fundamental change in its primary goals or mission'), *adaptation as hybridization* and *rejection.* Rejection, they argue, happens when intermediaries fail to convince parties to reform or in bridging the global/local gap.

indicate that foreign development actors arrived with a problematic term as the fundamental basis of their intervention.

Because the rule of law model in Myanmar is appropriated by local and national actors to signify 'law and order' or 'rule by law', intermediaries are responsible for creating different interpretations through their translations of the model. By drawing on their foreign capital (outlined in detail in Chapter 4), intermediaries are able to navigate the model's various interpretations. A representative example is provided by a local intermediary, who explained how, for the former Union Solidarity Development Party-led government, the rule of law meant "Being quiet under the law, that the people are obeying the law … We have a vocabulary in international law for this – 'rule by law'" (Interviewee #55, 26 Sep 2015; see also interviewee #24, 14 October 2014). By expressing his understanding of international law and aligning himself with the 'we' of the 'international', the local intermediary distanced himself from local interpretations

I experienced another example of adaptation when I met with one of the intermediary NGOs that had attracted significant donor funding for rule of law related activities since the country's opening. When I met with one of the NGO leaders, he repeatedly described their work in terms of 'democracy' and 'accountability' with little reference to 'rule of law' (Interviewee #30, 24 October 2014). A webpage listed their work as focusing on 'rule of law and human right-based [sic] democracy' (Namati: Innovations in Legal Empowerment). Such reference illustrates the possibilities of the creative reinterpretation and mobilization of rule of law language that happen in Myanmar. In this case, the idea might have been to emphasise the importance of human rights and rule of law for democracy and stress the term's substantive sense, which is easily lost in translation when the model merges with existing understandings in Myanmar. For the organisation's later activities, 'justice' was stressed as a way to "[avoid using the] term rule of law", even though the previous use of the term had emphasized

a "substantive definition, tweaked with human rights" (Interviewee #20, 30 September 2014).

8.3.2. Recursive Translations

Intermediaries' translation work had the effect of foreign actors increasingly recognizing the difficulty with using rule of law terminology in the Myanmar setting. Eventually, such understandings led them to adopt discourses that moved away from using the term rule of law. Instead foreign development actors began to use terms like 'access to justice' (Interviewee #12, 7 May 2014) because it was easier for local actors to identify with than 'rule of law' (Interviewee #56, September 2015):

> Some people say that we should not use the term 'rule of law' better to use 'access to justice.' We listen to what they want most of the time, sometimes directions come from above that we need to use certain concepts, like 'accountability.' (Interviewee #19, 25 September 2014)

> I want to stress [access to justice]. Increasingly, I have tried to avoid using the term [rule of law] ... We are staying away from it more and more. The term has been taken up by *ma ba tha* [Association for the Protection of Race and Religion] during the recent weeks, it almost carries potential for someone who is on the wrong side. (Interviewee #20, 30 September 2014)

> I tend to talk about rule of law in a broader context. Our mandate is to promote rule of law globally. Access to justice and legal side of development included. It is a bit tricky with local stakeholders with the connotations of rule of law when translated into Myanmar, a bit authoritative. I try to focus on what is rule of law beyond translation and what is the difference between 'rule of law' and 'rule by law.' We don't start with the assumption that they would interpret it the way we see fit. The Government understands it different than civil society. They might initially have a negative view but once they know about the principles and the aims people's attitudes change. (Interviewee #54, September 2015)

> We try to introduce fair trial rights, standards, human rights etc. Promoting justice sector reform is one of our goals- explaining what the justice sector is and the concept of a justice sector. Rule of law is everywhere, constant discussion. Usually I put it in terms of what do we mean by these ideas. It often comes down to fairness. A senior government counterpart shared a term with me: 'living under the framework of the law leads to a just and peaceful life'. The concept is also Buddhist infused. Applies to the people- the civil servants don't see it so much as applying to them. (Interviewee #35, 19 November 2014)

> I explain it as the opposite to have a person's sense of injustice resolved, rather than a set off institutional processes. Institutional arrangements are still not working, limited and

> need tweaking, quite obvious that there is a political engagement and entrenched elite that has got a very firm grip. (Interviewee #20, 30 September 2014)

Such type of 'recursive' - multi directional processes of 'back and forth' - translation have also been documented by Halliday and Carruthers (2009) in their case study of the incorporation of global insolvency regimes in Indonesia, Korea and China. The authors analyse the phenomenon in terms of the movement that happens between the 'politics of enactment' and the 'politics of implementation' (see also Scribner and Slagter 2017). They argue that responsive, multi-directional and mutual influence flow between actors participating in the development process and that intermediaries feed domestic adaptation 'upwards' (Halliday and Carruthers 2007). We saw this happen also in Myanmar. Berger (2017) in his case study of rule of law assistance to Bangladesh shows how 'norm translation' unfolds recursively, rather than in a 'global' to 'local' fashion. The global norm thus changes meaning through local and intermediary influences (see also Seidel 2017, Zimmermann 2017).

Changes in Donor Discourse

The UNDP has told us to talk about access to justice and not rule of law. (Interviewee #12, 7 May 2014)	There is no consensus about what 'justice' means in the Myanmar setting. (Lisa Denney, ODI, conference presentation at Australasian Aid Conference 2016)	It is easier for some to talk about trust rather than rule of law. (Interviewee #53, 5 October 2015)

By the latter stages of my fieldwork, the discourse of rule of law assistance in Myanmar had shifted to a language that increasingly focused on 'trust.' In Chapter 7 I analysed how intermediaries took on the role as trust-builders in Myanmar's

environment of distrust. However, the focus on trust also extended to the framing of rule of law activities, often after a realisation that neither 'rule of law' nor 'access to justice' were suitable terms to use because "People can misunderstand" them (Interviewee #53, 5 October 2015).

A focus on establishing trust in rule of law institutions is indeed a common component and key goal for many rule of law projects. For example, the EU-funded and British Council- implemented Myanmar project 'MyJustice' seeks, as a key principle, to 'encourage learning, trust and collaboration between communities, civil society, legal professionals and justice institutions' (British Council 2016). The UNDP's feasibility study of rule of law centres for Myanmar includes 14 references to 'trust' (March 2014) and after implementation of the centres a long-term goal of the project was described as including 'to build greater trust in Myanmar's justice system' (International Development Law Organization 2016). The training provided at the centres is described as contributing to trust-building (United Nations Development Programme Myanmar 23 January 2016). At a graduation ceremony the training completion is framed as 'A Step Towards Building Public Trust in the Justice System in Myanmar' (United Nations Development Programme Myanmar 14 February 2015). A local organisation frames one of their rule of law projects as 'building support for justice' under the banner 'Access to trust' (presentation slides, 4 October 2015, on file with the author).

In addition to a focus on trust-building as part of a broader agenda to establish trust in the justice system, what stood out in the recursive translations going on in Myanmar was the tendency to replace 'rule of law' terminology with 'trust.' Two foreign practitioners explained the rationales for their projects' focus on trust:

> We present this project as building trust because it is quite critical, a good 90 percent of the people have little trust. The trust building element is critical. It is a way of saying that you are going to work with a lot of actors but slightly empty in a way. (Interviewee #20, 30 September 2014)

> Many people talk about trust so we pick this terminology/focus- it's especially important in relation to the police and courts, it's a better term than rule of law that people can misunderstand. Access to trust, looking at it from different angles. The basis of trust with the authorities is the law, if you obey the law, you have their trust. My observation after two years in this country is that there is no trust, especially between the government and public. It is easier for some to talk about trust rather than rule of law. (Interviewee #53, 26 Sep 2015)

Another foreign practitioner suggested that they often worded their rule of law reform efforts as 'trust' when working with the government, because, "In a place where law is seen as a transactional discipline - the emphasis on building trust is a two way stream. Institutions must improve and people be sensitized on the role of those institutions" (Interviewee #54, 26 Sep 2015). What these examples tell us is that the rule of law model has no real traction in Myanmar. What matters, instead, is to what extent projects build trust. The paradox of such foreign- supported efforts to build trust in Myanmar's justice system is that the foreign-funded initiatives and foreign interests currently prevailing in Myanmar are handicapped by the lack of trust towards them (outlined in Chapter 7).

8.3.3. Intermediaries' Allegiance to Source or Target

The discursive translations of the rule of law model that occur in Myanmar are not without friction, because of the gap between the global model and 'local' and 'national' values and understandings. Intermediaries' involvement in translation is compromised as they struggle to balance their allegiance to 'global,' 'national' or 'local' values. While intermediaries often raised the need for local and national adaptation in interviews, foreign actors stressed the need for replication, as they repeated allegiance to the model's technologies (discussed in Chapter 3). These include international standards and global human rights regulation, which thus far have had little traction in Myanmar (Pedersen 2008):

> We base all our work on international standards on rule of law. Justice officials here equals rule of law with law and order so they think that is really good. Always when we engage we do it within the framework of international standards, human rights etc. I still think there is so much confusion of what it means. (Foreign practitioner, interviewee #31, 10 November 2014)

> We have our ideas of international best practice. In this field there is pretty good consensus of what an independent judiciary is. Of course everything has to be adopted to the local context. Part of our job is to overcome the scepticism to change. We have been pleasantly surprised to the openness, they see that we don't have an agenda but just want to be helpful. Sometimes there is scepticism when we talk about certain big transformative ideas. It is our profession to navigate that challenge through pilot projects etc. and see what works. We don't try to enforce anything (although sometimes our clients will ask us to enforce a bit of course). We break things down and look at how it would work in practice and lead them to the process to analyse issues themselves. (Interviewee #25, 3 October 2014)

In the national context, replication is difficult because the role of international law in Myanmar was, and remains, ambiguous and unclear (Booth 2016). A local translator explained that some of the main difficulties of his work derived from the fact that "the international law concepts are not coherent with Myanmar custom; people do not understand what they read" (Interviewees #57 and #58, 30 September 2014). A government representative similarly suggested that international law had little means of being adapted to Myanmar's culture and that instead "They [the international community] should change the international law so that it fits the Myanmar context" (Interviewee #37, 20 November 2014). Such adaptation is, of course, a central feature of vernacularization (Levitt and Merry 2009), however, for foreign practitioners the idea of abandoning their allegiance to international standards is unthinkable, unless it involves particularly 'sensitive issues' such as war crimes prosecution or global standards for citizens' rights (Interviewee #2, 7 May 2014, interviewee #3, 8 May 2014).

A daunting example of how international law is met with suspicion was provided by a local intermediary who explained that local counterparts [in this case, local lawyers] expressed distrust toward international law and international interests:

> Many think that international law is just nonsense, 70 % don't care about international law, they don't have the legal knowledge about the supremacy of international law over national law. They don't know the basic fundamental international laws. Sometimes we hear that we

> need to abandon certain things, universal rights for national interests. (Interviewee #55, 26 Sep 2015)

A local human rights activist, however, argued that concepts that relate to human rights were rooted in Myanmar's Buddhist culture and that the common understanding of international law as something foreign was deceiving: "It is not about bringing something foreign to our culture even if that is what the regime wants us to believe" (Interviewee #26, 6 October 2014). Still, more common understandings seemed to be that foreign technologies (in this case international legal instruments) that were used to explain the rule of law model had to be adjusted by intermediaries, who had to carefully balance their boundaries in between 'global' and 'local' dichotomies and different actors' commitment to different points on that spectrum.

Scholars have previously found that intermediaries' commitments to either the 'source' or 'target' have implications for how they operate as translators. The table below, for example, captures Merry's suggestion that '[t]ranslators committed to the target produce more hybrid transplants, whereas those closer to the source create replicas' (Merry 2006a, 8). Halliday and Carruthers (2009), also examining the influence exerted by intermediaries, suggest that intermediaries who are more loyal to the nation-state rather than a global organisation are more likely to justify objection or resistance of global norms. Both thus find that intermediaries may not be fully trusted, or that their loyalties may be opaque, and that they might be more devoted to one side than the other for strategic or natural reasons.

Replication and Hybridization according to Merry (2006)

Intermediaries Closer to the Global Source	**Replication** • Source Relatively Dominant • Superficial Adaptation • Import Remains Largely Unchanged
Intermediaries Committed to the Local Target	**Hybridization** • Target More Powerful • Influenced by Local Institutions and Structures • Merges the Import with Local Institutions and Symbols

In this study, intermediaries who worked for foreign organisations and who were invested in international law were closer to 'the source' rather than 'the target' and they drew on their 'foreign capital' to gain social capital at home (outlined in Chapter 4). However, intermediaries' commitments sometimes became a source for conflict between development counterparts who were influenced by different understandings of what the rule of law means. Overlaid on such conflicts was local and national actor distrust of foreign interests. An example of the intermediaries who worked on a project involving local lawyers as counterparts is telling. The intermediaries were criticised by local counterparts for 'twisting' messages in meetings, for being in favour of 'international ideas' rather than local ones, and for getting "too much attention from the international side" (Interviewee #47, 9 December 2014). One of the intermediaries' reply to that criticism indicated how he saw his role in the processes of translation: "I try to show how international and national law can align … try to show them how to think what is the best option for them" (Interviewee #17, 23 September 2014). A similar explanation was provided by another intermediary:

> I explain the local context to the internationals and the international framework to the locals. They say: 'Hey - don't stand in the way.' They think it is my view and that I am more on the international side but I am just explaining the framework- they say 'They don't understand the Myanmar context' – I say 'You don't understand [me and the international framework]'. I don't want to be there in the middle. (Interviewee #14, 5 October 2014)

These comments suggest that intermediaries take on the role of explaining a system of international law that appeared 'foreign' to local and national actors, but that intermediaries understand because of their previous life experiences (outlined in Chapter 4) and current work. Below I describe how intermediaries do, in fact, apply strategies of selective translation to convey certain messages.

8.4. Selective Translations and Moral Entrepreneurship

Rule of law intermediaries in Myanmar influence translation activities by infusing them with their own values and understandings, grounded in personal and political motives (discussed earlier in Chapter 4). Merry (2006, 40) similarly finds that translators often have bonds to various interests and quest for 'opportunities for wealth and power' that affect the processes of vernacularization. Boissevain suggests that the broker is a 'professional manipulator' who receives her power by facilitating transmissions of messages through a sequence of complex manoeuvres involving manipulation and self-interests (1969, 382).

Intermediaries in this study found it necessary to filter certain messages. For example, one local intermediary explained that in his role as 'translator' he did more than just 'ordinary' translation. Rather, he said, he infused translations with his own values when he helped explain concepts:

> Sometimes I also do something like translator, but not just translator, it is not only word translation but also concept translation, an ordinary translator cannot do this … I feel like I am helping the process. It is good to put some of your own values in the translation. (Interviewee #17, 23 September 2014)

Based on the intermediary's motivation to 'help people in need' he perceived this act – what we might call a form of 'moral entrepreneurship' (Becker 1973, Finnemore and

Sikkink 1998), as an important part of his work in trying to influence actors around him to understand the rule of law model.

Paine 1971, 6-7) suggests that the 'middleman role' also involves 'the dissemination of his own value system … concerned about the kind of exposure that is made … of western values which may impinge upon his domain'. In Myanmar, intermediaries infuse translations with their own values to protect local-level interests from 'foreigners' (Interviewee #3, 8 May 2014; interviewee #34, 18 November 2014). The form of 'moral entrepreneurship' that intermediaries engage in is linked to their attempts to build social capital as brokers as they also work towards their own agenda (something that we saw, in Chapter 4, as being more far reaching than the work they did for foreign development actors).

Intermediaries' strategies for infusing translations with their own values led to tensions with foreign practitioners. One respondent suggested that tensions arose with local staff when "They have a translation role but also want to make their own point" (Interviewee #4, 15 May 2014). Respondents described how intermediaries did not 'just translate' but also did 'something else' (Interviewees #6; #7; #31). The words 'something else' indicate that intermediaries were seldom perceived as neutral translators. This was a recurrent theme in interviews:

> Many people here have extraordinary personal histories, they bring that into the work, this can be much more important than being a 'neutral' translator … but then there is the issue of bias, do they bring their own views and meanings into the interpretation? … They tell us sometimes if it is their own view we get. (Interviewee #7, 21 May 2014)

> Having someone like [intermediary] has two sides to it- he has a quasi-coordinating role so it is good that he is there. The other aspect is that because he has that role, he knows the whole background of why I am there, what I want to know, hear etc. the issue then is that he is not interpreting all for me but gives his opinion on things and paraphrases a lot, this does not necessarily give accurate information. For example, while chatting informally after the meeting, he will tell me things that I was not told in the meeting. (Interviewee #8, 22 May 2014)

> Interpreters want to protect the other side from looking bad. Happened for example with a famous historian back in the days who was interpreting from English on television, this still happens and sometimes the interpreters mess up and they know it. (Interviewee #10, 12 May 2014)

Intermediaries confessed that they 'tailor' (Interviewee #29, 23 October 2014) and 'filter' (Interviewee #8, 22 May 2014) messages, sanitize 'dirty info' (Interviewee #6, 19 May 2014), use 'many language tricks' to make meanings more pleasant, and "give many options for interpretation" (Interviewee #14, 5 October 2014):

> I use many language tricks. Myanmar people speak in a very strong language. I make it a bit more pleasant. I want them to know what this all really means - I am like a bridge. I give many options for interpretation. You can hire an interpreter, but they can make a lot of problems, they don't understand all the concepts and how to keep the different actors satisfied. So this is part of what I do. (Interviewee #14, 5 October 2014)

> One problem is that the foreigners will tell me one thing, and I will tell the same thing to my superiors sometimes, however, sometimes I have to modify the message a bit, and then sometimes my superiors might not want to answer the question (and I know that) so when I give the answer, to the foreigners, it sounds like I am answering something different, and then they think that I did not understand their question. (Interviewee #34, 18 November 2014)

Such alteration of meanings by intermediaries has been analysed by political anthropologists. For example, in an analysis of middlemen in the community of his study, Paine suggests 'that there is a great deal of selective communication regarding what reaches local populations … and vice versa' (1971, 6-7). Cohen and Comaroff (1976) argue that it is the capacity to manage meanings that become an essential aspect of 'power' available for the intermediary who sometimes strategically manipulates 'transactional relationships' and the frameworks for interpreting such relationships (1976, 89). That selective translation was common was also recognised by foreign practitioners:

> I have seen things happen often. It's a shame that things get lost in translation- things happen and to prevent it both sides need to be more responsible. (Interviewee #6, 19 May 2014)

> There is a lot of trust involved in these Myanmar language things and how messages are being conveyed. Because I am getting interpreting from these two people I guess they are filtering the message. (Interviewee #8, 22 May 2014)

> He knows how to tailor messages to the audience, I recognize it, but I have seen many organisations that don't recognize that the guy is saying something else. It is not an issue in our organization but I do think it is an issue. Not everyone gets human rights so he has to be careful and make sure the message comes out the right way. You have to really

> start at the beginning, at the basics and not with high level concepts. Even the basics were illegal until a couple of years ago. (Interviewee #29, 23 October 2014)

Rule of law intermediaries' selective translations not only affected communication between development counterparts but also influenced local receptions of the rule of law model. Intermediaries found it necessary to protect local interests from foreign development actors' tendency to view their knowledge as the most advanced (Rottenburg 2009, 174) in a setting where "Not even the lawyers are so strong on the topic" (Interviewee #27, 7 October 2014).

By using strategies of substituting the content of translation with their own views and values, and claiming to know best, intermediaries were also able to displace linguistic experts. Professional interpreters were sometimes dismissed as being unsuitable for the task of working on rule of law, yet intermediaries were not performing the interpreting role to the ethical standards that would be required of a professional interpreter. The relative absence of professional, high quality interpretation services in Myanmar at the time (Dolinska 2017) might have contributed to opportunities for intermediaries. However, the frequent suggestions by foreign practitioners, and even more frequent suggestions by intermediaries, that the field involved such complex translations that no ordinary interpreter or translator could suffice, are striking In effect, intermediaries' interpreting and translation could not possibly be neutral, yet international employers tried to manage intermediaries -- and their tendency to deploy themselves to further their own ends. However, because of their acute need for intermediaries (outlined in Chapter 6) and the scarcity of professional legal interpreters in Myanmar, foreign practitioners became even more reliant on these actors. While intermediaries' moral entrepreneurship and selective translations embody the ambiguity of their loyalty and commitments (Merry 2006a, 40) they remain perhaps the most central components of rule of law assistance to Myanmar.

8.5. Conclusion

In this chapter, I argued that the history and dynamics of authoritarianism in Myanmar have a profound impact on the way rule of law was locally adopted and appropriated at national and local levels. Intermediaries hold a key responsibility for conveying ideas from one context to another, adapting and reframing them from the way they attach to a source context to one that resonates with the new location. The overview illustrated that 'authoritarian rule of law has foundations and facades that must be penetrated in order to be analysed' (Rajah 2012, 280) through the story of local redefinitions of the rule of law model as 'law and order.'

I illustrated how intermediaries translate the rule of law model to the Myanmar setting and argued that they are seldom neutral translators, because they put their own values into translations and filter messages as 'moral entrepreneurs', thus protecting local-level interests from foreign interests. In their translations of rule of law, they move away from the discourse used by global actors to avoid connotations to 'law and order'. My research reveals how intermediaries frame rule of law in ways more suitable for the national and local settings by abandoning references to aspects of a global language that they see unfit for their purposes. The global rule of law model is thus reframed to match existing ideologies and understandings.

I also suggested that foreign practitioners in the field had the scope to steer activities towards topics or areas they deem necessary or possible to engage with, but that often such decisions were based on the insights or wants of the local intermediary. Translation thus happens also from the 'middle-up', because intermediaries not only translate downwards but shift foreign practitioners' approaches of how to frame 'rule of law'. This is an expected part of the process of translation, yet practitioners are continuously criticized for not being able to adhere

to idealised conceptions of the rule of law – either those put forward by scholars or the working definitions used within their organisations (see e.g., Santos 2006, 282).

By analysing the strategies intermediaries use, it becomes evident that intermediaries are significantly relied upon to carry out development work and that they become powerful in the role of translator because they do more than mobilize their contacts and use local language skills. They buffer conversations in which the speakers are mutually incomprehensible, and they often substituting content of their own in those encounters, where they think the substitution will work better. This means that the choice of intermediary becomes important — understanding their drivers and motivations and the pressures that they experience is critical because these influence their performance. From this we can understand that, even when the linguistic translation problems are 'solved' (e.g., local interlocutors become better at English), the collision of concepts and priorities, and the appropriation of the new concepts for local uses (both benign and less benign) is likely to continue. Thus we can see that one (although not the only) outcome of foreign intervention in Myanmar is likely to be 'rule of law' with a very authoritarian cast.

Chapter 9. Intermediaries' Power, Foreign Actors' Dependence

With Myanmar's 2010 general election, the country's regime undertook a managed transition from military rule. As foreign organisations flocked to Myanmar to initiate rule of law assistance, intermediaries emerged to mediate, translate, or broker a rule of law model proposed by foreign actors.

This thesis posed the question -- how do intermediaries influence rule of law assistance in Myanmar? By answering the research question together with a set of sub-questions relating to intermediaries' emergence, backgrounds, motives, methods, and activities, this thesis has established that in Myanmar, the emerging field of rule of law assistance was shaped, in part, by intermediaries who came to possess influence and power.

My extended fieldwork, conducted primarily in Yangon in 2014 and 2015, found evidence that foreign actors often relied on intermediaries who were charismatic, fluent in English, and had been educated abroad. Many had a background in social or political engagements, and some previous experience of working for foreign development actors. Foreign actors confessed that they were reliant on intermediaries to carry out their rule of law assistance activities. Some intermediaries capitalised on these new opportunities, as they reinvented themselves as consultants or started their own NGOs or law firms. Intermediaries had motives and goals that stretched beyond the work they did for their foreign employers - which had implications for how rule of law project activities came to be planned and implemented, the way rule of law was translated, and ultimately development sustainability.

The central findings of this thesis show that intermediaries possess power and influence in the rule of law assistance field because they steer the direction of development interventions, translate global concepts selectively, and mediate and buffer

complex disagreements between development counterparts that do not share the same values and understandings. Intermediaries possess power and influence over rule of law assistance in Myanmar because foreign development actors who lack cultural and linguistic knowledge are reliant on them to carry out their development activities, and because those foreign actors are distrusted.

Throughout this thesis, I showed that, because of their central importance, intermediaries influence and shape rule of law assistance as they influence project allocation, deliver diffused messages of 'local needs', and because they have the power to decide who will, or will not, be included in development activities.

This concluding chapter first outlines this study's contributions and implications for theory and practice. Then I present the central findings and the arguments made based on those. I conclude by highlighting this study's limitations and potentials for further research that can advance scholarly enquiry into the field of rule of law assistance.

9.1. Implications for Theory and Practice

My work contributes to the scholarly work on rule of law assistance by theorising rule of law, for purposes of development intervention, as a 'travelling model' rather than a global norm or principle. In Chapter 3, I suggested that there is a global rule of law model constituted by shared ideas about rule of law. I then unpacked the rule of law model's key technologies, created and promoted by powerful global actors who facilitate actions that are intended to promote the model from a distance.

Although critique and a need for re-invention has been voiced in the field of rule of law assistance (as outlined in Chapter 1) the examination of the ideological underpinnings of the field has remained static. Through my theoretical

conceptualisation, I provided a critical perspective on the attempts to transplant Western 'concepts', 'norms' or 'principles' to new settings: I provided illustrations of how, in those processes, concepts and norms need to be translated and mediated by intermediaries. This intermediation is necessary because the introduced processes, concepts and norms are part of development models and not global or universal principles.

I advanced current theory in the scholarly field of rule of law assistance by introducing an actor who has remained largely silent in the literature on rule of law assistance: the intermediary. This focus also relates to debates that stress the importance of sociological understandings of the law, because it centres on the individuals who are responsible for various forms of legal translation and appropriation. I also provided a more in-depth account of some of the central actors of concern for scholars within the field of norm translation.

My work contributes to the anthropological study of brokers and intermediaries by providing an account of their experiences from Myanmar. Also, by highlighting the effect of intermediaries' activities during a historical moment of political transition in Myanmar, I provided empirical insights into the particular challenges of translating rule of law to a regime transitioning from military to civil-military rule. Such inquiry is essential because donors in the rule of law field continue to apply global development models regardless of the local political reality. As my findings from Myanmar highlight, donors need to adjust their strategies to Myanmar's political realities because development 'on paper' looks different from development in practice.

Donors have yet to recognise the various ways in which intermediaries shape processes of rule of law development. This study demonstrated how donors could gain an understanding of what is happening in the confined spaces, places and meetings that are inaccessible to them, or that official reporting fails to capture, by accessing the

insights of intermediaries. The challenges faced by rule of law intermediaries also point to what is going 'wrong' in the field of foreign-assisted rule of law reform in setting such as Myanmar, because intermediaries are also repositories of knowledge about the challenges that their counterparts face.

This work suggests several implications for the field of rule of law development practice, which include: the importance of long-term engagements and relationship building; the risks of preferencing personality over experience and technical skill when selecting intermediaries; the effects of a continued donor preference for foreign 'expertise' when structuring rule of law interventions; and the importance of understanding why fostering social capital matters for those interventions and for the intermediaries who work with and within them (as shown in Chapter 4). While these observations may be familiar ground for seasoned development practitioners, this study has shown, by tracing the relationships of both practitioners and intermediaries in the rule of law assistance field, that the donors, head offices, and policy makers who structure that field are slow to apply such insights and instead continue to promote global prescriptions.

My findings also challenge some of the assumptions about power relationships in the development field: for example, the idea that international knowledge, expertise, and values are favoured or dominant is challenged by the empirical finding that, in fact, rule of law development interventions rest on actors with local knowledge, networks, and the incentives and ability to adjust messages to fit local values. Technical skills and 'getting the job done' continue to be stressed as important by international actors, yet local access and knowledge -- fostered through intermediaries' abilities to network and accumulate social capital -- is regarded as vital by intermediaries. We also see that donor use of formal reporting and evaluation technologies leads to disagreements that erode, rather than build, trust. This matters because trust is repeatedly identified as a key

variable for relationship building between counterparts (Chapter 7). As shown in Chapter 6, donor discourses and global regulatory instruments that stress local ownership and participation are disregarded in practice in this setting: foreign development actors quite deliberately screen the group that they regard as legitimate 'local owners'. Intermediaries too are not appointed indiscriminately: donors are particularly cautious not to engage actors too closely connected to the military, or those who do not share their ideas of what human rights constitute.

9.2. Ethnographic Attention to Intermediaries

Research that involves charting intermediaries' careers and activities is a strategy with great potential because it reveals ethnographic insights that remain largely unreported form formal accounts of rule of law assistance. This exploration of intermediaries in Myanmar provided a rich account of the way individuals and their agency have potential for shaping rule of law development assistance. Seeking the vantage point of those in the middle revealed that intermediary actors are pivotal to rule of law development efforts, yet their influence remains largely unacknowledged.

This thesis sought to show that rule of law practice needs to move away from viewing intermediaries as neutral facilitators or natural, indispensable features of the field in the shape of 'that guy,' 'the translator,' or the 'local contact'. Instead, we should regard them as worth studying and understanding in some depth as people and as actors whose capabilities and choices often steer the direction of rule of law development assistance. This is particularly important in a setting such as Myanmar, where foreigners continue be excluded from both psychological and physical spaces of local and national power.

By analysing intermediaries' influence and power in rule of law practice, we can see how their roles are created, why actors seek them out, and how they affect development processes, and this opens up the potential to better understand how rule of law implementation in transitional settings can be improved.

If the donor community is willing to move away from the current predominant tendency to privilege international 'expertise' and knowledge and to consider intermediaries' accounts of rule of law interventions, it may be possible to design assistance in ways that better benefit people who live in societies where a well-functioning system of rule of law is lacking.

9.2.1. A Typology of Intermediaries

By drawing on in-depth empirical research carried out in Myanmar, this thesis provided a typology of intermediaries that I presented: the local lawyer, the local NGO, the local staff, the international consultant, and the government employee. My inductive approach to the study of intermediaries (outlined in Chapter 2) refrained from attempts to pre-define these actors. Instead, I discovered who was an intermediary through ethnographic study. Such ethnographic attention to intermediaries showed that their role is fluid: intermediaries often wear different hats, do not have fixed roles, and oscillate across assignments and institutions which enable them to obtain multiple influence at different levels. In Chapter 6, I showed how the most sought-after intermediaries worked for several donors simultaneously, which sometimes made it look as though several actors supported the rule of law model, when in fact only a handful of people channelled much of the rule of law assistance. Foreign actors were not always aware of the many involvements of the intermediaries, who carefully balanced their multiple roles and identities.

The search for intermediaries was made within the field of rule of law assistance that emerged in Myanmar after political transition in 2010. In Chapter 5, I gave a description of that field and illustrated how foreign development actors sought to promote the rule of law model after political transition in various ways. I also presented responses to this process by local actors as they became development counterparts. I suggested that the initiation of rule of law assistance in Myanmar meant that international, national and local structures were brought into contact in ways that would have been unthinkable during the preceding decades of military rule. It is a setting where relationships between development counterparts are still emerging and where intermediaries, I argued, thus became important for shaping processes of rule of law development.

9.3. Intermediaries Influence Processes of Rule of Law Development

In this thesis, I showed that foreign actors become reliant on intermediaries for carrying out development intervention: the many practice examples revealed that intermediaries mediate disagreements, steer the direction of development projects, and mediate distrust.

9.3.1. Intermediaries Mediate Disagreements

In Chapter 5, I showed how, as rule of law assistance took root in Myanmar, this led to contestation. Local participants questioned what they saw as divergence between their motivations for engaging in rule of law development work, and those of their foreign counterparts. Asymmetries in knowledge of the local setting and imbalances in power relations also fuelled complaints that donors were pushing their own agenda.

Competitive and contested ideas and approaches needed careful balancing by rule of law intermediaries, who had to mediate between - and coordinate - counterparts.

Intermediaries were necessary because there was a 'clash' of values, objectives or approaches when the rule of law model hit the ground in Myanmar. They emerged to navigate between the different norms, values and motivations of international, national, and local structures and actors. Reforms in Myanmar and the resulting development assistance in turn reopened or created new fields of action, to which an increasing number of intermediaries were attracted.

9.3.2. Reliance on Intermediaries

Intermediaries thrive in the rule of law assistance field in Myanmar because foreign development actors need the assistance of individuals who understand their aims and objectives, can help them navigate unfamiliar systems, and who can reach out to potential counterparts.

Chapter 6 showed that, as a result of the influx of foreign development actors, individuals drew on their personal social capital in order to carve out a space in the rule of law assistance field. In doing so they re-invented themselves as consultants, NGO leaders, and employees for international organisations. The demand for intermediaries prompted individuals to re-invent themselves as a result of opportunity or 'discovery' of new openings that enabled increased access to power and economic resources. On the government side, intermediaries also emerged, although this was less because of 'opportunity' and more because of 'burdens' that must be carried out dutifully.

As a result of high demand but limited supply of suitable intermediaries development actors compete for individuals who possess valued characteristics. To bolster the lack of supply, foreign development actors also support the creation of

coalitions and invest in NGOs that can serve as competent intermediaries. Such approaches have implications for development sustainability and local ownership.

The demand for intermediaries creates opportunities for these actors to influence the direction of rule of law assistance. While foreign practitioners in the field have the scope to steer activities towards topics or areas they deem necessary or possible to carry out, in practice such decisions are often based on the insights or wants of the local intermediary.

9.3.4. Personalities and Networks

This study found that there is a tendency by foreign actors in Myanmar to seek individuals with likable personalities who are 'easy to work with' and have large networks. This approach has implications for rule of law assistance if it means that foreign actors choose to work with intermediaries out of convenience, rather than making an informed decision about those with the most influence.

Intermediaries' identities are important because their agency shapes processes of rule of law development. In Chapter 4, I revealed some commonality in the backgrounds of some of the intermediaries in this study: they were politically engaged, had studied English during military rule, and had gained access to foreign education and work opportunities for foreign organisations. I argued that after political transition, rule of law intermediaries mobilised the foreign capital they accumulated during military rule within the rule of law assistance space that emerged. This was evident, for example, in the way intermediaries used their networks to select who got to be included in rule of law activities, in the way they were able to travel more freely across Myanmar and thus became the satellites for new ideas and the rule of law model, and in the way they used

their foreign language skills as knowledge brokers, channelling information in the languages of actors on 'both sides.'

9.3.5. Trusted Links between Counterparts

Foreign development actors intervened in a setting where nationalist sentiments had prevailed for decades and where foreign influences and interests were met with suspicion. In Chapter 7, I detailed the problems pertaining to distrust that exist between local and foreign counterparts in Myanmar.

Foreign practitioners experienced lack of trust as a key constraint on their rule of law work in Myanmar and they understood that whether or not they were 'trusted' mattered. Because trust was perceived as a prerequisite for successful rule of law assistance, it became the focus of much donor effort. Gaining trust, however, became a comparatively burdensome task because relationships with local actors were difficult to build. Thus because foreigners lacked prior proof of their trustworthiness, known actors such as intermediaries instead took on the important role of trust builders.

Intermediaries are able to build trust because of interpersonal qualities. However, intermediaries' roles as trust builders is not without complications. They continually have to navigate the perception that they are too close to the 'foreign' side, which can be damaging for their reputation and they are drawn into mediating conflicts because are so often trusted with important information. Perceptions of the trustworthiness of intermediaries as fair and honest with local populations was a consistent predictor of the success of the networked relationships. Thus, in enhancing local perceptions of foreign-funded rule of law development initiatives, the ability to demonstrate cultural respect, interact personally and informally, and perform duties consistently and professionally tends to matter more than generous grant-making.

9.4. Donors Apply Models Regardless of Political Reality

The analysis of intermediaries and their role as translators in this study revealed that foreign donors continue to apply development models regardless of the political reality of the country of intervention. This leaves little room for alternative conceptions of the rule of law. Instead, such alternatives emerge when intermediaries translate the rule of law to the local context in Myanmar.

In Chapter 8, I suggested that the history and dynamics of authoritarianism in Myanmar have an impact on the way rule of law has been locally adopted and appropriated. I illustrated how intermediaries translate the rule of law model to the Myanmar setting and argued that they are seldom neutral translators because they put their own values into translations and filter messages, either as 'moral entrepreneurs' or to protect local level interests from foreign interests. I found that global actors in Myanmar seek to disconnect their contemporary work from earlier 'law and order' associations with rule of law used by the military leadership. My research revealed, however, that intermediaries frame rule of law in ways more suitable for the national and local settings and will abandon references to aspects of the global language when they judge this to be unfit for their purposes. In this way the global rule of law model is reframed to match multiple existing ideologies and understandings.

This study also indicated that intermediaries influenced foreign actors recursively with their translations from the 'middle-up'. While the themes and structure of rule of law promotion were similar to those found in other settings, a more detailed examination of rule of law activities showed that different forms of translation happened, often through the influence of key intermediaries. I explored such adaptations in Chapter 8.

I also suggested that foreign practitioners in the field formally have the power to steer activities towards topics or areas they deem necessary or possible to engage with, but that in practice such decisions are based on the insights or desires of the local intermediary. Translation from the 'middle-up' thus also occurs when intermediaries shift foreign practitioners' approaches to how to frame 'rule of law'. This is an expected part of the process of translation, yet practitioners are continuously criticized for not being able to adhere to idealized conceptions of the rule of law (whether those put forward by scholars or the working definitions used within their organisations).

By analysing the strategies intermediaries use, it becomes evident that they are significantly relied upon to carry out development work and that they become powerful in the role as translator because they do more than mobilize their contacts and use local language skills. In practice they buffer conversations in which the speakers are mutually incomprehensible, and they often substitute content of their own in those encounters, where they think the substitution would work better. This means that the choice of intermediary becomes important — and understanding their drivers and motivators and the pressures that they experience is important because it in turn shapes their performance. From this we can understand that even when the linguistic translation problems are 'solved', e.g., local interlocutors become better at English, the collision of concepts and priorities, and the appropriation of the new concepts for local uses (both benign and less benign) is likely to continue. Thus one outcome of foreign intervention in Myanmar must inevitably be 'rule of law' with a very authoritarian cast.

9.5. Limitations and Further Areas of Research

Although my research has reached its aims, there were some unavoidable limitations. Most of these were recognised at the outset and accounted for in Chapters 1 and 2 -- for example, my lack of full Myanmar language proficiency, the selection of Yangon as the main research site, and the fact that I approached the research site as an 'international' and foreigner. Deliberately, I did not seek my first contacts amongst Myanmar individuals, but among foreign rule of law practitioners because I wanted to understand their experience of working in a new setting that was culturally and linguistically inaccessible. My entry point gave me an initial understanding of the challenges foreign rule of law promoters faced as they attempted to navigate a new setting and thus became reliant on intermediaries. This approach, however, only shows one side of the story. While I managed to capture some local voices, further research would benefit from the researcher embedding herself in a local setting (possible now that rule of law assistance projects are more established and stable) to explore the work and influence of intermediaries from the 'bottom up' perspective and through the experiences of local actors (and in ethnic minority areas), rather than those of their foreign counterparts.

Similarly, another picture would likely emerge if a researcher embedded himself in the capital of Nay Pyi Taw to further study the work of government intermediaries, as well as those politicians who play such role. At the time of my research, access to such actors was limited and while I managed to interview some government officials this was a difficult task that also raised ethical issues (outlined in Chapter 2).

This study analysed 'global' to 'local' translation as it played out through the work of intermediaries located primarily in one site (Yangon). Future research would benefit from an ethnographic approach that involves back and forth movement (Justice

1986) between multiple sites (Marcus 1995) of translation, where intermediaries are active at different levels. Such approach can further anthropological understanding of translation as a recursive phenomenon rather than a 'top-to-bottom' chain (Berger 2017).

The theoretical framework of 'travelling models' that was presented in this thesis could be adopted to other technologies that circulate in the global rule of law assistance field, for example, common interventions that focus on 'legal aid' or 'customary justice'. These are also technologies that are often taken for granted but seldom unpacked and analysed as models that travel.

The research problem addressed here crystallised through the use of a mix of disciplines and literatures. Interdisciplinary research of this kind has both benefits and limitations. Carrying out an exploratory and inter-disciplinary study in Myanmar, which, comparatively, was an under-researched setting, had its limitations. Because I was researching 'rule of law' as a development field, I was not drawing on existing legislation and legal document analysis. Because the field was so new, I was not able to draw on previous studies of rule of law assistance in Myanmar, and work on intermediaries, especially in relation to the field of rule of law, was scarce. While the lack of previous studies in the research area was a challenge, my inter-disciplinary training helped me to draw on resources from a mix of disciplines and to collect data from the field. Interdisciplinary research thus contributed to original research in ways a traditional disciplinary or legal approach to the study of rule of law would not.

The findings from this thesis showed that a methodological focus on intermediaries as central units of analysis is a productive way of unlocking ethnographic knowledge of the development field. Such focus on intermediaries can be adapted to different settings as well as to other fields of development. An enhanced study of

intermediaries in different development settings could also be done through an analysis that questions the role of different types of expertise in the field of rule of law.

The study of rule of law intermediaries can be applied in other settings to explain how rule of law making at new sites involves -- and requires -- contestation, translation and adaptation by intermediary actors. For example, we know little about intermediaries' role in translating globally constructed rule of law indicators. In relation to the UN's Sustainable Development Agenda, which to a great extent focuses on formal reporting requirements and statistics, an exploration of the work of intermediaries can provide key insights to how the sustainable development goals are being brokered and translated below and besides the channels of official reporting.

There are possible avenues of more detailed explorations of intermediaries, their lived experiences, the projects and funds they manage, and their vulnerabilities explored through more detailed ethnography and personal narratives. Also, by focusing more in-depth on one major rule of law project in the field, a deep and narrow analysis of intermediaries could be carried out. At the time of my research, rule of law projects tended to be small, in development, and scattered geographically, but by 2018 there were numerous larger projects with more actors involved.

This study also provides insights for the way we understand the myriad of justice actors found in the literature on legal pluralism because the creation of, and reliance upon, intermediaries means that a new layer of actors and norms have been introduced to Myanmar's plural legal system. In some legal systems outside Myanmar, new institutions and legal and paralegal roles created through development assistance have become a quasi-permanent feature of that host legal system or have stimulated local system responses. The advent of rule of law assistance in Myanmar is so recent that it is too early to make such predictions, but the phenomenon itself it is worthy of attention, because it alters our understanding of viewing legal pluralism as an occurrence

in under developed settings that foreign assisted rule of law interventions aid to systematise.

Ideally, future research may consider the field of rule of law development in Myanmar as it has progressed under future governments and the tangible results that might flow from a wider variety of intermediaries (for example, retired or seconded government officials) who further capitalise on new opportunities to promote change.

Rule of law assistance in Myanmar was a comparatively new phenomenon at the point at which this research began, but its prospects for inducing sustained change were increasingly questioned against the backdrop of the political and humanitarian events that played out as I concluded this project. Regrettably, interviewees for the project had often cautioned, the political climate seemed to be chilling toward, rather than warming to, rule of law norms. Both foreign and local rule of law actors mentioned the lack of room for engagement as a matter of concern. The trajectory of Myanmar's political transition is unpredictable, but this study is evidence of how intermediaries came to play a vital role in the field of rule of law assistance in Myanmar, and why they emerged with such enthusiasm, at a moment of transition in Myanmar's history.

APPENDIX A: Overview of Research Participants

Respondent	Category	Type of organization	Gender	Date
#1	Foreign	Multilateral	Male	6 May 2014
#2	Foreign	INGO	Male	7 May 2014
#3	Foreign	INGO	Female	8 May 2014
#4	Foreign	INGO	Female	15 May 2014
#5	Foreign	Multilateral	Female	16 May 2014
#6	Local	Multilateral	Male	19 May 2014
#7	Foreign	Multilateral	Female	21 May 2014
#8	Foreign	INGO	Female	22 May 2014
#9	Foreign	Multilateral	Female	23 May 2014
#10	Local	Bilateral	Female	12 May 2014
#11	Local	Bilateral	Female	14 May 2014
#12	Foreign	Bilateral	Male	7 May 2014
#13	Local	NGO	Male	9 May 2014
#14	Local	NGO	Male	5 Oct 2014
#15	Foreign	INGO	Female	22 Sep 2014
#16	Local	Bilateral/NGO	Female	22 Sep 2014
#17	Local	NGO	Male	23 Sep 2014
#18	Foreign	INGO	Male	24 Sep 2014
#19	Foreign	Donor	Female	25 Sep 2014
#20	Foreign	Donor/bilateral	Male	30 Sep 2014
#21	Local	Donor/bilateral	Male	30 Sep 2014
#22	Local	NGO	Male	2 Oct 2014
#23	Local	NGO	Male	2 Oct 2014
#24	Local	NGO	Male	14 Oct 2014
#25	Foreign	Donor/bilateral	Male	3 Oct 2014
#26	Local	NGO	Male	6 Oct 2014
#27	Local	Donor/bilateral	Female	7 Oct 2014

#28	Foreign	NGO	Male	22 Oct 2014
#29	Foreign	INGO	Male	23 Oct 2014
#30	Local	NGO	Male	24 Oct 2014
#31	Foreign	Multilateral	Female	10 Nov 2014
#32	Foreign	Donor/bilateral	Male	30 Nov 2014
#33	Local	NGO	Female	11 Nov 2014
#34	Local	Government	Male	18 Nov 2014
#35	Foreign	Multilateral	Female	19 Nov 2014
#36	Local	Government	Female	19 Nov 2014
#37	Local	Government	Male	20 Nov 2014
#38	Local	Government	Male	20 Nov 2014
#39	Foreign	Donor/bilateral	Male	22 Nov 2014
#40	Foreign	NGO	Female	9 Dec 2014
#41	Foreign	Government	Male	11 Dec 2014
#42	Local	NGO	Male	5 Nov 2014
#43	Local	Donor/bilateral	Male	1 Oct 2014
#44	Foreign	Donor/bilateral	Female	30 Sep 2014
#45	Foreign	Donor/bilateral	Female	30 Sep 2014
#46	Local	NGO	Female	9 Dec 2014
#47	Local	NGO	Male	9 Dec 2014
#48	Foreign	INGO	Male	10 Oct 2014
#49	Local	NGO	Male	11 Dec 2014
#50	Local	NGO	Male	8 Dec 2014
#51	Foreign	University	Male	12 Dec 2014
#52	Foreign	University	Male	12 Dec 2014
#53	Foreign	NGO	Female	5 Oct 2015
#54	Foreign	INGO	Male	25 Sep 2015
#55	Local	INGO	Male	26 Sep 2015
#56	Foreign	Multilateral	Female	26 Sep 2015
#57	Local	NGO	Male	30 Sep 2014

#58	Local	NGO	Male	30 Sep 2014
#59	Local	Government	Male	15 Dec 2015
#60	Local	INGO	Female	3 Dec 2014
#61	Local	INGO	Female	3 Dec 2014
#62	Foreign	INGO	Female	1 Dec 2014
#63	Local	Parliament	Male	14 Sep 2014
#64	Local	Parliament	Male	16 Sep 2014

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